

MEDIATION SUMMARY

Mediation Summary Date: Wednesday, October 27, 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): Cheryl Tredgett

Applicant(s): Michael Grisch
Ian Robertson

Property Address/Description: 20 WOODLAND PARK RD

Committee of Adjustment File Number(s): 20 217523 ESC 20 MV

TLAB Case File Number(s): 21 163972 S45 20 TLAB

Mediation Date: Tuesday, October 19, 2021

MEDIATION SUMMARY DELIVERED BY Dino Lombardi

APPEARANCES

Owner/Party	Todd Burdon
Co-Owner	Vanessa Burdon
Party's Legal Representative	Tara Piurko
Party's Expert Witness	T. J. Cieciora
Appellant	Cheryl Tredgett
Appellant's Legal Representative	Alan Heisey
Appellant's Expert Witness	Michael Manett
Appellant	Michael Sean Gaudet
Party	City of Toronto

Party's Legal Representative

Marc Hardiejowski

Participant

Dennis Rushforth

INTRODUCTION AND BACKGROUND

On May 12, 2021, the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) conditionally approved the application submitted by the Applicant, submitted on behalf of Todd and Vanessa Burdon (Owners) of 20 Woodland Park Road (subject property). The Owners received approval for eight (8) variances in total in order to construct a new, two-storey residential dwelling on the subject property.

Ms. Cheryl Tredgett, the abutting neighbour, and Mr. Michael Sean Gaudet, an adjacent neighbour, 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 'virtual' Hearing date of October 19, 2021, to hear the appeal.

In the interim, between the filing of the appeal and the scheduled Hearing, the TLAB received an email on September 24, 2021, from Ms. Tredgett's solicitor, Mr. Heisey, requesting that the Hearing scheduled for October 19th be converted to a TLAB-led Mediation session. His email was carbon copied to both the other Parties, Mr. Guadet, and the City, through their counsel Mr. Hardiejowski, seeking their consent to this request.

Additionally, Mr. Heisey indicated that if the TLAB could consider an earlier date for the requested Mediation session on consent, he was prepared to canvas for available dates from all Parties.

Unfortunately, the Parties were unable to agree on alternant dates canvassed by the TLAB for an earlier Mediation session. As a result, the Parties agreed to proceed with the October 19th date and to convert the Hearing into a Mediation session pursuant to Rule 20.3 of the TLAB's Rules.

The Hearing on October 19th was conducted virtually using the City's WebEx meeting platform. In attendance were the individuals listed under the 'Appearance' section, above, in this Mediation Summary. Mr. David Igelman also attended as an observer from Ms. Piurko's law firm (Miller Thompson LLP).

I commenced the day by noting that a request was received to convert the Hearing into a TLAB-led, confidential Mediation session on the consent of all the Parties to this matter. 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.

Given that there appeared to be interest from the Parties to engage in meaningful and constructive dialogue to narrow the outstanding issues in the hope of arriving at a settlement, and pursuant to TLAB Rule 20.1, I converted the Hearing into a Mediation session and agreed as the presiding Member to engage the Parties as the mediator.

At this juncture and for the benefit of Mr. Rushforth who was in attendance and who had had elected Participant status, 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 TLAB-led Mediation unless allowed to do so by the Tribunal. Mr. Rushforth explained that he was Ms. Tredgett's spouse, co-owner of the abutting property, and was advised by TLAB staff that he could not participate as a co-Appellant in this matter. He requested that he be able to engage in the Mediation as a partner with Ms. Tredgett.

There was no objection from the other Parties to this request and I, therefore, ruled that Mr. Rushforth could take part in the 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.

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 TLAB's Rule also require that a Mediation Summary be issued where the Mediation is unsuccessful in resolving one or more of the issues in dispute.

The Mediation session engaged much of the day. The session commenced with the Parties' legal representatives providing brief, opening statements indicating the positions of their

Mediation Summary of Toronto Local Appeal Body Member: D. Lombardi
TLAB Case File Number: **21 163972 S45 20 TLAB**

client's and unresolved or outstanding issues in dispute. Mr. Gaudet, who was unrepresented, was also given an opportunity to provide an opening statement as was the City. I note that the City, although having elected Party status, had not filed any documents to indicate their intended evidence and issues under appeal as directed by TLAB's Form 12 (Party Witness Statement) by the requisite due dates noted in the Notice of Hearing as prescribed by the TLAB's Rules. Instead, following contact by TLAB staff, Mr. Hardiejowski forwarded an email to the Tribunal on October 18, 2021, briefly outlining the City's issues with the proposal.

Given that this email had not been forwarded to the other Parties, Mr. Hardiejowski agreed to send a copy of the email to the attendees in the Mediation session for their information.

The Parties in the subject matter participated in productive and civil discourse conducted by way of multiple, virtual 'in-camera, breakout' sessions. It became apparent early in the Mediation session that there were three fundamental issues in dispute, namely: the massing of the proposed dwelling resulting from the variances for height and length; the impacts of overlook, privacy, and shadows on the abutting neighbours; and 'precedent'. These issues were already highlighted in the disclosure materials and documents pre-filed by the opposing Parties in this matter.

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 period on October 19th that included discussions with the respective owners of the subject property and the Appellants who were abutting neighbours. These sessions included generally investigating viable alternative design options for the existing dwelling to achieve the renovation objectives of the Owner. Both the Burdons and Ms. Tredgett and Mr. Gaudet established positions regarding what they could and could not accept in terms of modifications to the proposal.

Although the discussions undertaken seemed constructive and positive, at the end of the day the Parties were unable to arrive at a settlement of the issues in dispute and the Mediation session concluded. However, given the progress that had been made, I suggested that if there was an appetite to do so the Parties should continue discussions privately to reach a resolution of the remaining issues in dispute prior to the next Hearing date. I understand that the Parties may be so inclined.

With respect to setting a new Hearing return date, and after consulting with TLAB staff, four (4) possible dates were provided to the Parties – November 4th, November 29th, November 30th, and December 1st, 2021. Ms. Piurko suggested that since a second Hearing date may be required to hear this appeal, a second date should be secured at this time as well. The Parties agreed, were canvassed for their availability, and November 29th and 30th were the two dates tentatively identified for Hearing Day 1 and 2, respectively.

Although there was consensus amongst the Parties regarding these dates, Mr. Hardiejowski indicated that he would not be unavailable on any of the four days highlighted. Given the number of Parties and participants in this appeal, I asked Mr. Hardiejowski whether another City solicitor could attend in his stead. I thought this request reasonable given that the City had advised that they did not intend to submit any documents in this matter to support their position.

I advised the Parties that TLAB staff would proceed to secure those dates and would issue a new Notice of Hearing to memorialize those dates. I also advised that due dates for document

disclosure advanced in the previous Notice of Hearing issued July 6, 2021, would remain the same.

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 that were in dispute in this matter. I also would like to thank those neighbours who elected Participant status and who agreed not to attend the virtual Mediation session, on the advice of Mr. Heisey, for allowing the Parties the unfettered ability to engage in confidential Mediation without their participation. Mr. Heisey explained that he advised those Participants (5 individuals listed on the TLAB's List of Appellants, Parties, Participants and Legal Representatives in this appeal) not to attend the Mediation given Rule 13.8 c) of the TLAB's Rules regarding the role of Participants.

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 pursuant to TLAB Rule 20.5.

I agreed and, therefore, I am seized on the matter.

Epilogue

Following the conclusion of the Mediation session on October 19th, I realized that I was unavailable to preside on the return Hearing date of November 29, 2021 (Hearing Day 1). As a result, I requested that TLAB staff canvas the Parties, again, to determine whether the two Hearing dates could be rescheduled as follows – November 30, 2021 (Hearing Day 1) and December 1, 2021 (Hearing Day 2). The Parties had initially indicated that they were available to attend on these dates. After a further canvassing, these two dates were acceptable.

I apologize for the inconvenience this may have caused to the Parties and Participants.

2021-11-02

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DINO LOMBARDI
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar