

DECISION AND ORDER

Decision Issue Date: Thursday, October 28, 2021

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) and subsection 45(2)(a)(i) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): NADEREH BINESH

Applicant: REPLACEMENT DESIGN

Property Address/Description: 141 CRESCENT RD

Committee of Adjustment Case File Number: 20 210209 STE 11 MV (A0944/20TEY)

TLAB Case File Number: 21 163536 S45 11 TLAB

Written Motion Hearing Date: Friday, October 08, 2021

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

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| Applicant | Replacement Design |
| Appellant | Nadereh Binesh |
| Party/ Owner | Nicole Zarry |
| Party's Legal Rep. | Martin Mazierski |

INTRODUCTION

This is a motion by the owner of 141 Crescent Rd for which the Committee of Adjustment granted six variances for the reconstruction of a rear deck, an addition and a garage. An appeal was brought to TLAB by his neighbour, who had objected to the variances at the Committee of Adjustment and filed a picture to demonstrate her concern to the Committee. The motion is to strike out the appeal.

BACKGROUND

The basis for the motion is that the appeal was not brought in good faith as no material has been filed by the appellant in accordance with TLAB rules. Moreover, at the Committee the City staff had no objections to the application but rather suggested conditions of approval which the appellant agreed to. The appellant agreed to the conditions. The appellant had sent an email to the owner seeking compensation for alleged damage to a boundary fence between the owner's and appellant's property as a result of the construction for which the variances were sought.

MATTERS IN ISSUE

The matters in issue stated in the grounds for appeal relate to privacy, overlook and the closeness of the addition to the appellants property. The conditions of approval imposed by the Committee are not in issue. The issue on the motion is therefore whether the appeal is in bad faith, vexatious frivolous or for the purposes of delay as a result of the owner's failure to agree to pay compensation for the fence.

JURISDICTION

The TLAB has jurisdiction under Rule 9 of the TLAB Rules of Practice and Procedure to dismiss the appeal if it is found to be in bad faith and or frivolous, vexatious or for the purpose of delay.

EVIDENCE

The evidence on file is that the appellant has given grounds for appeal which on their face appear legitimate reasons for an appeal. She has, however, not filed any disclosure as required by the Rules. However, the Applicant has also not filed any disclosure and has constructed without obtaining approval of the variances and a building permit. Moreover, he has not disclosed how he has been prejudiced or injured by the appeal.

ANALYSIS, FINDINGS, REASONS

While I have some sympathy for the owner I do not find that the motion should be granted for the reasons set out below. .

The grounds of appeal disclose adequate reasons for the appeal and it may well be that the appellant will simply give her own evidence to support those grounds which in turn may be adequate disclosure.

The Applicant on the other hand may also simply give evidence as to why the appellant is incorrect in her assertions. However, he will have to bring evidence that the variances meet the four tests of the *Planning Act* and Provincial requirements. TLAB will then have to decide on the basis of whatever evidence is presented whether to grant or dismiss the appeal. I find it is not inappropriate have the burden of meeting the four tests and provincial requirements since he took such a risk in building without approval of the variances and a building permit.

I note that either party may seek consent or permission to file additional disclosure before the hearing.

I find it is not clear on the evidence that the appellant is acting in bad faith or for the purpose of delay or is vexatious. Moreover, if there is evidence that the fence was damaged during construction it may be appropriate for TLAB to impose a condition that the cost of repair or replacement be borne by the owner if the variances are approved. Under s. 45 of the *Planning Act* there is clear authority for TLAB to impose such a condition. On the other hand if lack of evidence or the evidence indicates an unreasonable appeal has been conducted there is an opportunity under the TLAB Rules for the Applicant to seek costs. These alternate remedies lead me to conclude that it is premature to grant the motion. I also note the owner does not come with "clean hands" in constructing without the necessary approvals and permits which also makes me reluctant to grant the relief he seeks.

DECISION AND ORDER

The motion is denied and the hearing will proceed as scheduled.

X 

S. Makuch

Panel Chair, Toronto Local Appeal