

# MOTION DECISION AND ORDER

**Decision Issue Date**      Monday, November 29, 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): **STEPHEN KLUS**

Applicant: **DESIGN PLAN SERVICES**

Property Address/Description: **416 OAKWOOD AVE**

Committee of Adjustment Case File Number: **21 145271 STE 12 MV**

TLAB Case File Number: **21 209166 S45 12 TLAB**

**Hearing date:**

**DECISION DELIVERED BY:** Panel Member A. Bassios

## REGISTERED PARTIES AND PARTICIPANT

APPLICANT	DESIGN PLAN SERVICES
PARTY/OWNER	1570654 ONTARIO INC.
PARTY'S LEGAL REP	MARTIN MAZIERSKI
APPELLANT	STEPHEN KLUS

## INTRODUCTION

This matter arises by way of a Motion from Mr. Marcin Mazierski on behalf of the Owner of the subject property, seeking an Order from the Toronto Local Appeal Body (TLAB) to dismiss the Appeal without a Hearing pursuant to TLAB Rule 9.1(a) and 9.1(h).

The Motion was held in writing.

## BACKGROUND

On August 18, 2021, the Toronto and East York panel of the City of Toronto's Committee of Adjustment (COA), approved a single variance to Section 3.2.1C.1 of By-law 1-83 (former City of York):

### **Section 3.2.1C.1., By-law 1-83**

A minimum of eight parking spaces are required to be provided.  
In this case, there will be two parking spaces provided.

An appeal was filed on September 7, 2021.

## MATTERS IN ISSUE

The matter at issue is whether the Appellant has raised sufficient planning grounds to warrant an oral proceeding before the TLAB.

## JURISDICTION

- 9.1 In the case of an Appeal under subsection 45(12) of the *Planning Act* the TLAB may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:
- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could allow all or part of the Appeal;  
.....
  - h) the Proceeding relates to matters which are outside the jurisdiction of the TLAB

## EVIDENCE

Mr. Mazierski has filed extensive Motion materials, including an affidavit from Steven Qi, a Registered Professional Planner. A Response to the Motion has been received from the Appellant and a Reply to Response has been filed by Mr. Mazierski.

Mr. Mazierski cited two grounds for his Motion to Dismiss: that no apparent land use planning grounds have been disclosed, and that the proceeding relates to matters which are outside the jurisdiction of the TLAB.

The *Notice of Appeal* Form 1 filed by the Appellant cited four reasons and grounds for the Appeal:

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1. Reducing the number of parking spaces required (8) has a negative impact on the neighborhood and will create congestion and clogging on the neighboring streets of Hanson Rd, Blandford St, etc. and Oakwood Ave, which already are at capacity for street parking for their own residents. Residents of the neighborhood who are paying for their street parking spaces should not have to increasingly compete with yet even more vehicles for the street spaces at or near their homes. The TTC is not a sufficient solution for those requiring vehicles for daily functions. Parking should be maintained at 8 spaces.
2. The parking spaces should be maintained at (8) spaces, not two (2) as per concerns for the placement of garbage storage which cannot be placed at or near neighboring residential property lines – this negatively impacts health, safety, sanitary conditions, property values and peace of mind of neighboring residential properties and should be stored either: i) inside of the building at 416 Oakwood, or ii) in front on Oakwood Ave for curbside pickup as all other multi-tenant buildings on Oakwood are currently doing in the immediate area (i.e.: 448, 452 & 458 Oakwood), or iii) along the south side of the rear lot of 416 Oakwood bordering non-residential property at 410 Oakwood to the south.
3. I have not had any correspondence or update with regard to this property whatsoever for years. I have a right to know what the recent history of the project has been and particularly any and all environmental issues and how they have been addressed. What are the environmental issues that exist? And what was and is being done (if anything) to remediate? It is impossible for it to be accurate that the contamination originates from “off-site” when the history of this address clearly had dry cleaning use “on its site”. The Ministry of Environment declined to grant a Record of Site Condition approval because of soil that needs remediation to qualify for residential use. If it can’t qualify for residential use then it is not fit to exist next to mine and other neighboring residential properties also.
4. Outdated reports or approvals dormant from 10 years ago are not accurate for today’s standards – and there is no record of a public hearing or any updates. Many changes in city policy have occurred in recent years with green space initiatives and more environmentally “clean” building and green space initiatives. Why is greenspace being overlooked – outdated “cash-in-lieu” from 13 years ago should not be applied for today’s green initiative standards (where more properties require 25% greenspace/landscaping) and there must be greenspace buffers between mine and other neighboring residential properties. This neighborhood is rejuvenating and gentrifying with families and children and cannot have an environmental anomaly with adverse risks to the residents’ health and safety in the middle of the neighborhood and next to residential homes. The bylaws state new developments will be reviewed on a case-by-case basis by Solid Waste Management Services. Garbage whether from residential or commercial sources (and potentially toxic substances that may be associated with future use are studio paints and supplies) cannot be stored outside near the residential neighboring properties.

## ANALYSIS, FINDINGS, REASONS

I concur with Mr. Mazierski that the Appellant's reasons and/or grounds numbered 2, 3, and 4 do not constitute planning grounds for the Appeal as they are not pertinent reasons or grounds to contest the single requested variance, which relates to parking.

### *Reasons/Grounds 2, 3 and 4*

The Appellant's concerns regarding the storage of garbage on the site are not grounds for an appeal of the variance requested for parking.

An Appeal of the requested variance, and a Hearing of the TLAB, is not a forum to satisfy the Appellant's quest for information regarding recent history of the project and the identification of environmental issues, if any. The Appellant must look to other sources for explanation and education regarding the environmental standards that apply to the remediation of soil. It is incumbent upon the Appellant to educate himself regarding the issues he raises. The purpose of the TLAB Hearing is only to adjudicate on the variance requested.

City policy and practice regarding greenspace, cash in lieu of parkland, and garbage are unconnected to the approval or refusal of a variance to sanction a parking deficiency of six spaces. The TLAB is not a forum for the discussion or of these issues, which are policy matters beyond the scope of the TLAB's jurisdiction.

### *Reason/Ground 1*

I find that the first ground for Appeal cited by the Appellant to be a viable ground for Appeal. It relates directly to the requested variance and specifically connects the variance to impacts and effects on parking on named streets in the neighbourhood.

Parking provision and consideration of impacts of parking for non-residential uses constitute planning grounds. The City's Official Plan contains guiding policies in this respect and parking provisions are contained in the Zoning By-law. This part of the Appellant's Appeal is specific to the neighbourhood streets and directly connected to the application and the variance requested. This aspect of the Appeal is squarely within the TLAB's mandate.

Parts of Mr. Mazierski's substantial Motion materials and Mr. Qi's affidavit address the merits of the Appeal, and contest the validity of the Appellant's assertions. These arguments fall within the scope of a Hearing of this matter, and do not provide foundations for a Motion to Dismiss. The Appellant must make Disclosure and provide Witness Statements and evidence in support of his assertions as part of the TLAB proceedings and within the stipulated timelines.

I find that only the first ground identified by the Appellant has relevance to the variance requested. The mandate of the TLAB is simply and only to consider the requested

variance. The only matter before the TLAB is the variance for parking and the Parties are advised that **only evidence that is directly relevant to the issue of parking provision on the subject property will be admitted in these proceedings.**

## DECISION AND ORDER

The relief requested in the Motion is not granted, the Appeal is not dismissed and the matter will proceed to a Hearing where the land use planning merits of the Appeal and the application can be considered.

X 

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A. Bassios  
Panel Chair, Toronto Local Appeal Body