

MOTION DECISION AND ORDER

Decision Issue Date Monday, August 30, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Nanu Alexandru Ion Dragos

Applicant(s): Peter Vozikas

Property Address/Description: 6 Benstrow Ave

Committee of Adjustment File

Number(s): 20 170209 WET 01 MV

TLAB Case File Number(s): 21 132798 S45 01 TLAB

Last Submission Date: July 19, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY: S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

APPLICANT PETER VOZIKAS

OWNER SANDEEP BHARDWAJ

NEENA SHARMA

APPELLANT NANU ALEXANDRU ION DRAGOS

INTRODUCTION AND BACKGROUND

Sandeep Bhardwaj and Neena Sharma are the owners of 6 Benstrow Ave. located in Ward 1 (Etobicoke North) of the City of Toronto. They applied to the City of Toronto's Committee of Adjustment (COA) to make various changes to their house, including construction of a second storey addition, a rear deck and a two storey south

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side addition. On March 9, 2021, the Committee of Adjustment (COA) heard the application, and approved it in its entirety. On March 16, 2021, Alexandru Ion Dragos Nanu, the neighbour who lives at 8 Benstrow Avenue, appealed the COA's decision to the Toronto Local Appeal Body, which had scheduled a Hearing on August 23, 2021.

On July 25, 2021, the Appellant, Party Nanu brought forward a Motion to:

- 1) Request for a postponement of the Hearing scheduled for August 23, 2021.
- 2) Under Section 18.4 of the Rules of the TLAB, ask the TLAB to order the "disclosure" of the following information

- "Disclosure of all communications between Community Planning, Etobicoke York District personnel and the Applicant Peter Vozikas, the Owners of 6 Benstrow Avenue property and the Zoning Review Engineer."
- "Disclosure of the guidelines and procedures that the Community Planning Etobicoke York District uses to review the application, to analyse the desirability of a proposed development and to make comments on it".
- "Disclosure of the training and the personnel's minimum knowledge requirement for the job of reviewing the proposed development applications".
- "Discovery of the cause of the following errors and confusions in the Community Planning Etobicoke York District Staff Report., which is to be done by answering the following questions":

4.1 Who, in the Community Planning Office, made the application description in the Staff Report?

4.2 Is the description "a two storey south side addition" conforming to the By-Law 569 which mandates all reference to be made to the main building or to the specific yard rather than cardinal point reference?

4.3 Did you realize that the south side is a side yard?

4.4 If so, why the correct reference was not used? Would you consider it as a factor generating confusion?

4.5 Why the application description in the Staff Report identifies the platform and the carport as two different structures rather than one single structure as shown in the drawings?

4.6 Are you aware that a structure of the type shown in paragraph 4.2 above is expressly forbidden (sic) in the By-Law 659 both as being a two storey structure in a side yard as well as a carport with a platform on top?

4.7 Provide the addresses for the properties you identified in your analysis of the Committee of Adjustment decisions for the surrounding area as having a second storey platform over 4 square meters, including their location (front, side or back yard).

4.8 What is your understanding of "surrounding neighbourhood" and why the analysis of the COA decision you made was not specific about the location of the two storeys platforms with regard to the main building?

4.9 What is the Planner's understanding of her job duties and what procedures or guidelines did she used when reviewing this application?

4.10 What are the Planner's Ameena Khan up-to-date training, examinations and qualifications?

4.11 Having taken notice of the errors and confusions in the Zoning Review and in your report, following my Request for Information (see attached), why did you choose to dismiss my request rather than answer in your response email (see attached Response to RFI - Community Planning)?

By way of an editorial note, on August 23, 2021, I learnt that Party Nanu did not inform the Applicants, Sandeep Bhardwaj and Neena Sharma , about the Motion to ask for a postponement, as well as the Motion for Discovery of the materials discussed in this Section. However, he included Mr. Peter Vozikas, who represented the Applicants before the COA. The lack of communication with the Applicants is a very important point, which I will return to this issue in the Analysis, Findings and Reasons Section

Mr. Nanu states he made all efforts to obtain the answers to these questions by writing to the Community Planning department, which “did not provide answers to any of the questions in the Request for Information”. He alleges that the Staff Report contains “errors and confusions”, and asserts that the “proposed two storey platform is not consistent with the pattern of development found in the neighbourhood.” He adds that “The neighbours of the surrounding area of 6 Benstrow Avenue support my statement that there are no two storey platforms in the side yard, nor platforms in top of a carport in our neighbourhood”., and attached a petition, with various signatures and addresses provided, demonstrating opposition to the proposal.

Mr. Nanu explains that the purpose of Questions 4.1-4.6 (which are reproduced earlier in this Section) is “to clarify the Planner's understanding regarding the compliance of a two storey structure containing an open platform in the side yard, encroaching the side line setback.”, while the purpose of Questions 4.7-4.8 (also reproduced earlier in this Section) is to “clarify the basis and to validate the result of the COA decision analysis stated as having been performed in the surrounding (sic) area of 6 Benstrow Avenue”.

On August 11, 2021, I reviewed the Motion material, and requested the TLAB staff to send out the following message to the Parties:

The TLAB Panel Member who will hear the Appeal respecting 6 Benstrow Avenue , has reviewed all the Motion materials submitted to the TLAB by Alexander Nanu. The Member notes that TLAB has not received any submissions with respect to the Motion from the Respondents/Applicants, Sandeep Bhardwaj and Neena Sharma.

The purpose of this email is to inform the Parties that the Panel Member has granted the component of the Motion which requests for an adjournment of the Hearing scheduled for August 23, 2021. There will be no Hearing held on August 23,2021 nor are appearances necessary for the Parties. A detailed written Interim Decision, which will answer all the questions raised in the aforementioned Motion will follow sometime in the next few days.

The case is adjourned and will be scheduled for a Hearing after the release of the Interim Decision, which as mentioned earlier, will answer all the questions raised in the Motion.

MATTERS IN ISSUE

The questions in front of me, regarding the Motion brought forward by Party Nanu are as follows:

- Request for postponing the Hearing scheduled for August 23, 2021
- Provide an opportunity to the Applicants for Responding to the Motion brought forward by the Moving Party.

JURISDICTION

The TLAB relies on its Rules of Practice and Procedure (“the Rules”) to make decisions about administrative issues.

ANALYSIS, FINDINGS, REASONS

As stated earlier in the “Introduction” Section, I learnt on August 23, 2021, that the Applicants had been excluded by the Appellant in the communication regarding the Motion before me. I understand that the agent who represented them at the hearing before the COA, Mr. Vozikas, was copied on both the Motion, as well as my email dated August 11, 2021, informing the Parties that the Hearing had been postponed. I was subsequently informed that it was not clear if Mr. Vozikas would represent the Applicants at the TLAB Hearing.

The exclusion of the Applicants in the exchange of information and Motions is regrettable because this deprives them of the opportunity to respond to the Motion .- while the Appellant’s including Mr. Vozikas in the communication is acknowledged, it would be appropriate to include the Applicants in all his communications with the TLAB.

The Moving Party’s request for a postponement of the Hearing was granted on August 11, 2021, because it was supported by documentation to demonstrate that Party Nanu had to travel outside Canada for family reasons, and would be out of the country on August 23, 2021.

The issue with my making a decision at this point in time, regarding discovery is that the Applicants, (and the Respondents to the Motion for discovery) have not been provided with an appropriate opportunity to respond to the Motion. I find that it is important to give the Applicants an opportunity to present their perspective on the

Motion for discovery, before making a determination about how best we can proceed with this case.

I find that it would be reasonable to give the Applicants till the end of day on September 13, 2021 to file their Response to the Motion. The Moving Party is given until September 20, 2021, to file a Reply to the Response from the Applicants. I will make a Decision about the discovery component of the Motion, after hearing from the Applicants and Appellant, by way of Response and Reply, respectively.

The Applicants, and Appellant are advised to consult the TLAB about how to file a Response, and Reply, with specific reference to the format, and documentation to be sent in, if necessary. They may however note that the TLAB cannot provide advice about the contents of the Response and Reply.

No decisions will be made about the Hearing date(s) to complete the Proceeding till a decision is served on the Parties regarding the Motion regarding discovery.

MOTION DECISION AND ORDER

- 1) The Hearing respecting 6 Benstrow Avenue, scheduled to be heard electronically on August 23, 2021, is postponed. No appearances were required of the Parties on August 23, 2021. The Hearing will be rescheduled, based on the availability of the Parties, and the TLAB, and after the issuance of a Decision regarding discovery.
- 2) The Applicants are given time till the end of the day on September 13, 2021, to file their Response to the Motion filed by the Appellant for discovery. The Appellant is given time till the end of the day on September 20, 2021 to file his Reply, after which a final decision will be made, regarding discovery. It is important that the Applicants and Appellant serve each other with all communications regarding this Appeal.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body