

# MOTION DECISION AND ORDER

**Decision Issue Date**      Monday, March 07, 2022

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): ROBERT ULICKI

Applicant: LEA WILJER

Property Address/Description: 459-461 SACKVILLE ST

Committee of Adjustment Case File Number: 17 253383 STE 28 MV

TLAB Case File Number: 18 150889 S45 28 TLAB

Written Motion: **January 31, 2022.**

**DECISION DELIVERED BY** TLAB Vice-Chair A. Bassios

## REGISTERED PARTIES AND PARTICIPANT

NAME	ROLE	REPRESENTATIVE
Lea Wiljer	Applicant	
Sherry D'Costa Correia	Owner	
Robert Ulicki	Primary Owner/Appellant	Ian Flett
City of Toronto	Party	Matthew Longo
Jane Pepino	Party's Legal Rep	
Paul Stagl	Expert Witness	
Alun Lloyd	Expert Witness	
Michael Tedesco	Expert Witness	

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 18 150889 S45 28 TLAB**

David Sajecki	Expert Witness
Ryan Sankar	Expert Witness
Kassel Prince	Expert Witness
Saius Jaskus	Party
Patricia Brubaker-Poulin	Party
Judy Woodin	Party
Glen Woodin	Party
David Cole	Party
Colette Hegarty	Party
Gary Hill	Party
Lillian Maniscole	Party
Lorraine Mackenzie	Party
Michael Butler	Party
Patricia Milne	Party
Shauna Macdonald	Party
Robert Jerrard	Party
Nara Jung	Party
Alexandra Vandelle-Gillespie	Party
Gregory Turcot	Party
Trudy Macneill	Party
Douglas Woodall	Party
Abdurrahman Al-Hesayan	Party
Patrick Robertson	Party
Jason Van Bruggen	Party
Russell Goodfellow	Party

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 18 150889 S45 28 TLAB**

Deirdre Sadler	Party
Gabrielle Mcintire	Party
Thomas Keeling	Party
Howard Bortenstein	Party
Mark Angelis	Party
Katherine Tozer	Party
Blaine Pearson	Party
Caroline De Angelis	Party
Alastair Dadds	Party
Hasan Uran	Party
Erin Blair	Party
Jane Roffey	Party
Mark Alboino	Party
Jutta Polomski	Party
Jim McNamara	Party
Charles Fahlenbock	Party
Kenneth Mathieson	Participant
Beverley Jenkins	Participant
Elizabeth Reynolds	Participant
Johanne Laperriere	Participant
Louise Garfield	Participant
Brandeis Jolly	Participant
Susanne Hudson	Participant
Christina Best	Participant
Randy Brown	Participant

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 18 150889 S45 28 TLAB**

Judy Lu	Participant
Sara Josselyn	Participant
Thorben Wiedilz	Participant
Rosemary Macklem	Participant
Maggie O'Connor	Participant
Marc Cote	Participant
Catherine Steinmann	Participant
Jocelyn Richardson	Participant
Ronan Rogers	Participant
Lee Anne Rogers	Participant
Janice Williams	Participant
Douglas Wilson	Participant
Lindsay Matheson	Participant
Derek Sweeney	Participant
Allen Zhang	Participant
Christopher Wirth	Participant
Alexandra Conliffe	Participant
Linnea Obern	Participant

## **INTRODUCTION**

The matter arises by way of a Motion brought by Robert Ulicki (the Appellant) seeking the following relief:

- a. An Order of the Toronto Local Appeal Body (TLAB) confirming its Decision and Order in respect of this matter dated January 8, 2021;
- b. An Order confirming conditions 1, 2 and 3 in appendix B of its January 8, 2021 Decision and Order are satisfied; and
- c. An Order deleting conditions 4 and 5 from the January 8, 2021 Decision and Order.

This Motion is being heard in the form of a written Hearing.

Two *Notices of Response to Motion* were filed, one by the City of Toronto (City) and the other by Parties Patricia Milne, Hassan Uran and Blaine Pearson. (For convenience, I shall refer to Parties Milne, Uran and Pearson as the “Opposing Parties”). A *Notice of Reply to Response to Motion* was also filed.

## **BACKGROUND**

On August 13, 2019 the Toronto Local Appeal Body (TLAB) allowed an Appeal and approved variances to permit a day care centre at 461 Sackville Road on an interim basis, subject to a further Hearing to confirm that the Applicant had obtained other approvals not within the TLAB’s jurisdiction to grant.

Requests for Review of that Decision were filed by the City and the three combined Parties that responded to this Motion. The TLAB granted the Requests in part and amended the interim conditions on January 8, 2020. This January 8, 2020 Decision is the operative Decision for this Motion. For clarity, I shall refer to it as the Review Decision.

### **“REVIEW REQUESTS DECISION AND ORDER**

91. The Requests in this Review are granted in part.
92. The Interim Decision dated August 13, 2020 insofar only as it relates to that part thereof by its language contemplating an interim order, is cancelled.
93. The Decision and Order paragraph of the Interim Decision dated August 13, 2020 is varied by its deletion and replacement with the following:
  - a) The variances listed in APPENDIX A are granted, subject to the Conditions of Approval identified in APPENDIX B.
  - b) The Conditions of Approval 1,2,3,4 and 5 in APPENDIX B are to be complied with on or before December 10, 2021, or such further time as a different Member of the TLAB may permit, failing which the Requests for Review requesting cancellation of the August 13, 2020 Decision are granted and the variances approved in paragraph 1 hereof are vacated and the decision of the Committee of Adjustment is confirmed.
  - c) APPENDIX A and APPENDIX B form part of this Decision and Order.
94. Subject to the disposition so noted, the Decision and Order dated August 13, 2020 is otherwise confirmed.

95. If difficulties arise in implementing this disposition, a different Member of the TLAB may be spoken to, on Notice.”

The variances which were listed in Appendix A and granted are as follows:

## **APPENDIX A**

### **Variance Approvals**

**1. Chapter 10.5.50.10.(3), By-law 569-2013**

A minimum of 50% (56.62 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping. In this case, 0% (0 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

**2. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of the mixed-use building is 1.0 times the area of the lot (354.82 m<sup>2</sup>). The building will have a floor space index equal to 1.72 times the area of the lot (610.37 m<sup>2</sup>).

**3. Chapter 15045.20.1 j2)(A), By-law 569-2013**

A day nursery is a permitted use provided that it is located in a building originally constructed as a detached house or semi-detached house and that the day nursery occupies the entire building. In this case, the day nursery will not be located in a detached house or semi-detached house.

**4. Chapter 200.5.10.1.(1), By-law 569-2013**

A minimum of two parking spaces is required to be provided. In this case, zero parking spaces will be provided.

**I. Section 6(2)(12)(i), By-law 438-86**

A day nursery is a permitted use provided it is the whole of a detached house or semidetached house. In this case, the day nursery will not be located in a detached house or semi-detached house.

**2. Section 4(5)(B), By-law 438-86**

A minimum of two parking spaces is required to be provided for on-site. In this case, there will be zero parking spaces provided for on-site.

**3. Section 6(3) Part III 1(A), By-law 438-86**

A minimum of 30% of the lot area (106.45 m<sup>2</sup>) shall be landscaped open space. In this case, 0% of the lot area (0 m<sup>2</sup>) will be landscaped open space.

**4. Section 6(3) Part 11, By-law 438-86**

The maximum permitted gross floor area of a mixed-use building is 1.0 times the area of the lot (406.45 m<sup>2</sup>). The building will have a gross floor area equal to 1.72 times the area of the lot (610.37 m<sup>2</sup>).

**5. Section 6(2)(12)(iv), By-law 438-86**

A day nursery is a permitted use provided no part of the building is closer to the nearest side lot line than 0.5 m. The building will be located 0.0 m from both the north and south lot lines.

The conditions contained in APPENDIX B of the Review Decision are the focus of this Motion:

**“APPENDIX B**

**Conditions of Approval**

1. The TLAB is in receipt of a written communication from the Owner providing evidence from an agent on behalf of the Province of Ontario that a permit, license or other approval, conditional or otherwise, has been issued by the Ministry of Education or other provincial authority authorizing the operation of a daycare at the subject property.
2. The TLAB is in receipt of a written communication from the General Manager, Transportation Services of the City that an appropriate number, safety signage, pavement markings or other forms of delineated on-street parking spaces, in proximity to the subject property and for the purpose of the pick-up and drop-off of daycare children, have or will be provided to the satisfaction of the General Manager.
3. The TLAB is in receipt of a written communication from the General Manager, Transportation Services of the City that the Owner has paid for or provided security in the amount necessary to provide drawings for and the installation of such facilities or matters required in Condition 1, generally in accordance with the recommendations of the *Parking Needs and Traffic Assessment Report* of Tedesco Engineering for the subject property, dated August, 2018 (Hearing *Exhibit 1*), as may be further modified to the satisfaction of the General Manager, Transportation Services.
4. At the Owner’s discretion or if required by any Provincial approval to so provide, the TLAB is in receipt of a written communication from the General Manager, Transportation Services confirming that the Owner has been granted (or has not applied for) a permit for commercial boulevard parking space in the location of existing boulevard parking (Drawing A1.1, Hearing *Exhibit 1, p.7*), at the Owner’s sole expense or security, to the satisfaction of the General Manager, Transportation Services.”
5. At the Owner’s discretion or if required by any Provincial approval to so provide, the TLAB is in receipt of a written communication from the Chief

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 18 150889 S45 28 TLAB**

Planner of the City confirming that the Owner has been granted (or has not applied for) a lease or license or entered into any other form of agreement required by and satisfactory to the City to permit the use of the municipal right-of-way as a children's playground in the location depicted in Drawing A1.1, Hearing *Exhibit 1, p.7*, at the Owner's sole expense or security, to the satisfaction of the Chief Planner.

## **MATTERS IN ISSUE**

The Appellant seeks an Order of the TLAB to confirm the Review Decision and confirm that Conditions 1, 2 and 3 contained in Appendix B of that Decision are satisfied. Further, the Motion seeks a Decision and Order of the TLAB to delete Conditions 4 and 5 of that Decision.

The City accedes that Condition 3 has been satisfied, is silent on the satisfaction of conditions 1 and 2 and is not in support of the request to delete Conditions 4 and 5.

The Opposing Parties do not concede that all of the required conditions were satisfied within the December 10, 2021 deadline set in the Review Decision and seek the remedy that was set out in that Decision, namely that approval of the variances be vacated and the decision of the Committee of Adjustment be reinstated.

## **EVIDENCE**

The following documents were filed:

- *A Notice of Motion Form 7* in the name of the Appellant, Robert Ulicki,
- The affidavit of Lea Wiljer in support of the *Notice of Motion*,
- *A Notice of Response to Motion* from the City of Toronto (Matthew Longo),
- *A Notice of Response to Motion* on behalf of Blaine Pearson, Patricia Milne, and Hassan Uran,
- The affidavit of John Pappas in support of the *Notice of Response to Motion* on behalf of Blaine Pearson, Patricia Milne, and Hassan Uran, and
- *A Notice of Reply to Response to Motion* on behalf of the Appellant, Robert Ulicki.

## **ANALYSIS, FINDINGS, REASONS**

The matter of variances for the proposed Daycare at 459-461 Sackville Street has a long and contentious history. It has been the subject of multiple Hearing days, a Decision of the TLAB and a Request for Review Decision rendered by a panel of three TLAB members.



**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

The scope of my task in this matter does not extend to a reconsideration of Decisions which have already been made. In particular, the Decision regarding the Requests for Review is final and binding and there is no provision under the TLAB Rules for a further review of a Review Decision.

In plain language, the Review Decision approved the variances with conditions and added a stipulation that the conditions be met by December 10, 2021, or such further time as a different TLAB Member may permit. The Decision states that the consequence of failure to comply with the conditions within the deadline, or revised timeline, is that the approval of the variances is cancelled and that the decision of the Committee of Adjustment to refuse the variances is reinstated.

All that is open to me is to determine whether the conditions have been satisfied in accordance with the parameters set out in the Review Decision. If I find that they have, the Decision to approve the variances stands. If I find that they have not, in accordance with the Review Decision, the August 13, 2020 Decision to approve the variances will be cancelled and the approval of the requested variances vacated.

Request to delete Conditions 4 and 5

Part “c.” of the Motion requests that conditions 4 and 5 be deleted from the Review Decision and Order. This relief will not be granted as there is no provision in the TLAB Rules of Practice and Procedure for a Decision resulting from a Request for Review to be varied. The Review Decision must be read as a whole and the conditions contained in Appendix B are explicitly included in the Decision and Order.

Has the Review Decision prerequisite for irrevocable TLAB approval been met?

Part “a.” of the Motion requests that the Decision and Order of January 8, 2020 (the Review Decision) be confirmed. I understand the intent of this request to be the confirmation of the first part of the Review Decision, the approval of the variances, and the elimination of the potential alternate path which would result in cancellation of the approval Decision. Achievement of this outcome is dependent on compliance with the Review Decision requirement that the conditions set out in Appendix B have been appropriately met.

Under the umbrella of the overarching request to finally and irreversibly approve the variances (my phrasing), the Motion is structured so as to request a different disposition of conditions 1, 2 and 3 from that requested for conditions 4 and 5. As I have found that the requested relief to delete conditions 4 and 5 will not be granted, achievement of the primary objective of this Motion, to confirm the TLAB approval of the variances irreversibly, requires confirmation that all of the conditions, 1 through 5 have been met.

Condition 1

*The TLAB is in receipt of a written communication from the Owner providing evidence from an agent on behalf of the Province of Ontario that a permit, license or other*

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

*approval, conditional or otherwise, has been issued by the Ministry of Education or other provincial authority authorizing the operation of a daycare at the subject property.*

The Appellant has provided a copy of a “Floor Plan and Site Plan Approval Letter” dated November 24, 2021 from the Ministry of Education as confirmation of an approval in principle for a child care centre licence at the subject property. (The letter has been included as Exhibit B in the Appellant’s Motion materials).

In their response to the Motion, the City did not comment with respect to Condition 1.

The Opposing Parties’ response to the Motion asserted that the Appellant has failed to obtain any permit, license or other approval, conditional or otherwise for the operation of a daycare. This response adds emphasis to the word **operation** in the language of the condition, as in requiring a permit to **operate** a daycare. The response goes on to say that “(t)his provision does not deal with a license to operate a child care centre. At most, the Ministry’s correspondence demonstrates an approval, in principle, of the layout and configuration of a building, which is itself subject to the satisfaction of several other requirements, including municipal zoning and building approvals.”

The response of the Opposing Parties quotes from correspondence of the Appellant’s lawyer in support of this distinction. The extract quotes as follows: “There is no further approvals required or available from Ministry of Education until the applicant seeks their full licence. A licence to operate can only be obtained after the Ministry of Education inspects the daycare centre in its final built form.”

What the Opposing Parties’ response lays out here is an inescapable Catch 22 situation for the Appellant: the Ministry will not grant a license until they are able to inspect a built and finished daycare and Mr. Ulicki cannot obtain the required permits and approvals to complete the alterations without the variances - which the Opposing Parties assert requires the granting of a license.

The intent of the condition is not to frustrate the Appellant from ever achieving compliance. The final paragraph of the letter from the Ministry of Education notes that “the approval in principle is for toddler room 1 and preschool room 2 to *operate* for less than six hours per day” (my emphasis).

I find that, in accordance with Condition 1, the Appellant has provided evidence from an agent of the Province of Ontario that an “approval” has been issued by the Ministry of Education authorizing the eventual operation of a daycare at the subject property. The conditional basis of the approval is overtly contemplated in the condition.

I therefore find that Condition 1 has been satisfied.

Condition 2

*The TLAB is in receipt of a written communication from the General Manager, Transportation Services of the City that an appropriate number, safety signage,*

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

*pavement markings or other forms of delineated on-street parking spaces, in proximity to the subject property and for the purpose of the pick-up and drop-off of daycare children, have or will be provided to the satisfaction of the General Manager.*

A copy of the November 24, 2021 Toronto and East York Community Council approval of parking amendments to facilitate the use of on-street parking spaces as pick-up and drop-off for the conditionally approved daycare has been provided in the Motion materials. The “bills” to enact these changes to parking regulations are to be introduced at such time as the license to operate the daycare is issued.

The City’s response to the Motion confirms that the decision to withhold the amendments is to avoid imposing parking restrictions immediately “when it is unclear if or when a licence will ultimately be approved by the Ministry of Education”.

Nonetheless, the Toronto and East York Community Council have adopted the amendments, thereby confirming the number and delineation of on-street parking spaces for pick-up and drop-off are satisfactory to City authorities, albeit with a delayed implementation and a direction for ongoing monitoring after implementation.

The City confirmed that payment has been provided to impose the safety signage and pavement marking referenced in the condition.

The Opposing Parties assert that Transportation Services staff have made “no such determination of the “appropriate number” of parking spaces” and challenge the recommendations of the staff reports that were submitted by Transportation Services staff to the Toronto and East York Community Council.

The affidavit of Mr. Pappas for the Opposing Parties argued that the adopted amendments to the are not a viable transportation solution.

The condition relies on the satisfaction of the City authorities (the General Manager of Transportation Services) as to the appropriate number and pavement markings etc. for the purpose of pick-up and drop-off. The staff report signed by the Acting Director, Traffic Management, Transportation Services states that “Transportation Services staff recommends the proposed number, location and operating hours of the pick-up/drop-off areas on Amelia Street and on Sackville Street.” The amendments to the parking regulations were adopted.

It is not open at this juncture to encumber the condition with broader tests of validity as is suggested by the Opposing Parties. Satisfaction of the condition relies on confirmation from the Transportation Services Department. City authorities, both staff and Community Council, have endorsed the arrangements for on-street parking spaces for the purposes of pick-up and drop-off for the proposed daycare.

I find that condition 2 has been met.

Condition 3

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 18 150889 S45 28 TLAB**

*The TLAB is in receipt of a written communication from the General Manager, Transportation Services of the City that the Owner has paid for or provided security in the amount necessary to provide drawings for and the installation of such facilities or matters required in Condition 1, generally in accordance with the recommendations of the Parking Needs and Traffic Assessment Report of Tedesco Engineering for the subject property, dated August, 2018 (Hearing Exhibit 1), as may be further modified to the satisfaction of the General Manager, Transportation Services.*

In their response to the Motion, the City confirms that payment has been provided to impose the safety signage and pavement marking identified in the Tedesco Engineering Report. The City submits that Condition 3 is satisfied.

The Opposing Parties submit that fulfillment of Condition 3 is predicated on fulfillment of Condition 1. In their submission, until such time that a permit to operate a daycare is issued, there can be no clarity on what exactly the “facilities and matters required in Condition 1” are. I do not accept the position of the Opposing Parties in this regard.

I have found that Condition 1 has been satisfied and on the basis of the approval from the Ministry that was achieved in fulfillment of Condition 1, the “facilities or matters” required in Condition 1 have also been crystalized.

The Opposing Parties further submit that the Tedesco Report was prepared on the basis of a state of facts that existed on or before August 2018, which they assert could not have considered up-to-date information.

Similar to my finding regarding Condition 2, I find that it is not open at this juncture to encumber Condition 3 with broader tests of validity as suggested by the Opposing Parties. The condition references the *Parking Needs and Traffic Assessment Report of Tedesco Engineering*, and specifically references the date of the Report. Updates were not contemplated.

Condition 3 relies on the satisfaction of the City authorities for confirmation that the Owner “has paid for or provided security in the amount necessary to provide drawings for and the installation of such facilities or matters required in Condition 1”.

The City has confirmed that payment has been provided in accordance with the condition and I find that Condition 3 has been satisfied.

Conditions 4 and 5

*At the Owner’s discretion or if required by any Provincial approval to so provide, the TLAB is in receipt of a written communication from the General Manager, Transportation Services confirming that the Owner has been granted (or has not applied for) a permit for commercial boulevard parking space in the location of existing boulevard parking (Drawing A1.1, Hearing Exhibit 1, p.7), at the Owner’s sole expense or security, to the satisfaction of the General Manager, Transportation Services.”*

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

*At the Owner's discretion or if required by any Provincial approval to so provide, the TLAB is in receipt of a written communication from the Chief Planner of the City confirming that the Owner has been granted (or has not applied for) a lease or license or entered into any other form of agreement required by and satisfactory to the City to permit the use of the municipal right-of-way as a children's playground in the location depicted in Drawing A1.1, Hearing Exhibit 1, p.7, at the Owner's sole expense or security, to the satisfaction of the Chief Planner.*

I have earlier in this Decision found that the relief requested by the Appellant to delete Conditions 4 and 5 will not be granted. Having found thus, I fall back to the Motion's first part which requests that the Decision and Order of January 8, 2020 (the Review Decision) be confirmed, which in turn engages the requirement that all five conditions be satisfied within a specified timeframe.

- Appellant's Discretion (4 and 5)

The Appellant's Motion materials state that Conditions 4 and 5 are at Mr. Ulicki's discretion where not required by a Provincial approval and confirms that no such approval has been required.

The Opposing Parties maintain that these two conditions are not entirely at the Appellant's discretion. They assert that a permit for commercial boulevard parking space at the owner's expense and/or a lease or license to permit the use of the municipal right-of-way to use as a children's playground could still be necessary as a result of the Provincial daycare licensing process.

The City also notes that Conditions 4 and 5 are worded to be required in the event that the owner *or* the Ministry requires the condition to be fulfilled. While the owner has stated they do not wish to pursue these additional approvals from the City, the City maintains that there is no finality as to what the Ministry may require as a condition of licence.

- Ongoing control via Conditions 4 and 5

In addition, the City raises the prospect of the ongoing application of these conditions in the following paragraphs (extracted from the City's *Response to Motion* materials);

*It is customary and appropriate that an approval authority impose conditions under which an owner of land may enjoy the additional permissions of a minor variance. These conditions may need to be satisfied prior to an approval order being issued or to control the use of land on an ongoing basis. An approval authority has significant discretion with respect to conditions upon approval and may grant a minor variance approval "for such time and subject to such terms and conditions as the committee considers advisable."*

*In the current case the TLAB was asked to consider a use variance that will operate in perpetuity and will not require any further review of the daycare use in the event the*

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

*details of that use change. It is appropriate to impose a decision and order now that is limited to the evidence that was provided at the hearing.*

*The Ministry has not provided final approval of a daycare licence, nor the conditions on which an approval will be granted. Further, conditions upon a daycare licence may change from time to time. In the event the owner seeks a change to the terms of their licence, for instance to increase the number of children permitted in the daycare on the Site, the Ministry may change the terms of the licence. This may require additional on-site outdoor play space or on-site parking for daycare staff. The TLAB should not simply delete conditions now that were reasonably imposed based on evidence before the Body, and may appropriately regulate the use of the land in the future.*

As I elucidated earlier, it is not open to me to vary, amend, or change the Review Decision. The Decision and associated Order are final and binding. The discretion that the City describes for the approval authority to set conditions that would regulate the use of the land in the future are no longer open. The Review Decision, and the conditions, stand as written.

The choice to activate the solutions contemplated in Conditions 4 and 5 are in the Appellant's hands, either of their own volition or as a result of a Provincial requirement. The City has confirmed that the Appellant has stated that they do not wish to pursue these additional approvals from the City. Also, at this time, the accommodations described in the conditions have not been required by the Ministry. Thus, neither of the two potential precipitating circumstances for the seeking of a permit for commercial parking space and/or a permit to use the City right-of-way for a children's playground are in play at this time.

Both the Opposing Parties and the City raise the concern that the accommodations contemplated in the conditions may yet be required by the Ministry. The City further submits that the conditions should remain in place on an ongoing basis.

The Review Request Decision and Order, in Paragraph 93 b) stipulates that "Conditions of Approval 1,2,3,4 and 5 in APPENDIX B are to be complied with **on or before** December 10, 2021, or such further time as a different Member of the TLAB may permit..." (my emphasis).

In order to fulfil this requirement within the specified deadline, the Appellant must have applied for the described permit and/or lease, or alternatively the City must confirm that described permit and/or lease have not been applied for. The City has confirmed in its Motion materials that the Appellant has applied neither for a permit for commercial parking space nor a lease/ license for the use of the City's right-of-way for a children's playground.

I find that Conditions 4 and 5 have been satisfied on the basis that the City has confirmed that the Appellant has not applied for the accommodations described in the conditions.

**Decision of Toronto Local Appeal Body Panel Member: A. Bassios**  
**TLAB Case File Number: 18 150889 S45 28 TLAB**

As a further commentary, I perceive the risk that use of the boulevard and/or right-of-way becomes necessary as a late-blooming requirement of the daycare licensing process is one that is borne by the Appellant. I do not find substantiation in the Motion materials that the City is under any greater or lesser onus to sanction the use of City boulevard space and/or right-of-way should Conditions 4 and 5 have remained in place. My determination that the conditions 4 and 5 have been satisfied does not affect the City's discretion or authority to grant or withhold any permits or leases on the City's boulevard or right-of-way.

If the details of the daycare use change in the future, as contemplated by the City, and the Appellant needs or wants to avail himself of a permit to use the boulevard or right-of-way, issuance of such permissions remain a prerogative of the City. The City's discretion and authority in this regard are not diminished by the determination that Conditions 4 and 5 have been satisfied.

That the Appellant has "opted out" of the potential arrangements described in the conditions is his choice and his risk. In short, the Appellant is the party that will be in a bind if in the future the Ministry requires a children's playground or commercial parking (that the Appellant can not accommodate anywhere other than on the City controlled boulevard and right-of-way) and the Appellant has not made suitable arrangements with the City. Without the City's cooperation, such a Ministry requirement will not be fulfilled and would presumably frustrate the issuance of any potential daycare license.

Deadline for the satisfaction of conditions

The Review Decision requires that "the Conditions of Approval 1,2,3,4 and 5 in APPENDIX B are to be complied with on or before December 10, 2021, or such further time as a different Member of the TLAB may permit...".

The Motion materials reflect the timely submission of written communications required by the Conditions of Approval prior to the December 10, 2021, with the exception of the payment/ security deposit that is required under Condition 3. The payment as required, was accepted by the City on January 10, 2021.

I accept that the Appellant made good faith efforts to comply with the above requirement by December 10, 2021 and was actively seeking instructions from the City as to the manner in which the payment was to be made. In the interim, he ensured that the funds were available through a payment into trust with the Appellant's solicitor. I find that the timing of compliance with this condition to be acceptable.

As the Review Decision makes provision that the deadline for submission of the written confirmations may be amended by a different Member of the TLAB, and because I have relied on the Motion submission and materials provided in response for confirmation that the conditions have been met, I shall permit an adjusted deadline for the satisfaction of the conditions to the Hearing Date of this Motion, January 31, 2022.

## DECISION AND ORDER

The requested relief is granted in part.

1. The Decision and Order in respect of this matter dated January 8, 2021 is confirmed.
2. The conditions contained in Appendix B to that Decision are satisfied.
3. The variances contained in Appendix A to that Decision are approved.
4. An amended deadline for the satisfaction of conditions contained in Appendix B is permitted and adjusted to the hearing date of this Motion, January 31, 2022.



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Ana Bassios  
Panel Chair, Toronto Local Appeal Body