

TELECONFERENCE SUMMARY/DECISION

Decision Issue Date Thursday, January 27, 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): DANIEL PESIN

Applicant: MARLENE SLOPACK

Property Address/Description: 74 Kimbark Blvd

Committee of Adjustment Case File Number: 17 159414 NNY 16 MV (A0499/17NY)

TLAB Case File Number: 17 219104 S45 16 TLAB

Teleconference Call date: Friday, January 14, 2022

DECISION DELIVERED BY D. LOMBARDI, TLAB Chair

ATTENDEE(S)

Appellant's Expert Witness JANICE ROBINSON

INTRODUCTION AND BACKGROUND

This matter involves an appeal of a decision of the City of Toronto Committee of Adjustment (COA) in respect of nine (9) variances, in total, sought in order to construct a new, single detached dwelling at 74 Kimbark Boulevard (subject property). The Toronto Local Appeal Body (TLAB) heard the matter, and the former Chair Ian Lord issued a Decision and Order (Decision) dated February 5, 2018, granting the appeal. An amended variances list was attached as Attachment 1 to that Decision.

There was no review request received by the TLAB pursuant to Rule 31 of its Rules of Practice and Procedure (Rules) and the Decision became final and binding.

Construction of the new dwelling on the subject property is now complete and occupied.

**Decision of Toronto Local Appeal Body Panel Member:
TLAB Case File Number:**

On December 19, 2021, almost four (4) years following the issuance of the Decision, the owners (Owners) of the subject property, Daniel and Nataly Pesin, contacted the TLAB by email to advise of an issue regarding the as-built dwelling. They noted that an issue with the rear deck landing and stairs had arisen whereby during construction the builder relocated the landing and stairs to the northeast corner of the rear deck due to a conflict with the below doors to the walkout basement.

In her email, Ms. Pesin acknowledged that this was an error on the approved architectural plans attached to the TLAB Decision. The error she submits was not realized until the house was built, and the landing and stairs constructed.

She confirmed that an inspection of the dwelling undertaken by City Zoning staff for occupancy revealed a zoning deficiency and, as a result, Zoning staff issued a Zoning Notice addressing the new location of the rear landing and stairs. Although the City allowed occupancy, City Zoning staff interpreted the language in the TLAB's Decision that the dwelling "*be construction substantially in accordance with the revised plans attached in Exhibit 2*" to mean that the rear deck landing and stairs were not in compliance.

City Zoning notified the owners that to comply with the Zoning By-law a new variance from the COA is now required.

Therefore, the Owners request that the Tribunal issue a correction to the February 5, 2018, Decision pursuant to Rule 30 of the TLAB's Rules, by attaching a revised Site Plan that reflects the current location of the rear landing and stairs. They submit that this would result in compliance with the Zoning By-law thereby avoiding the necessity for another application to the COA.

Attached to Ms. Pesin's email was an Affidavit, dated December 17, 2021, from Janice Robinson, a planner with the Goldberg Group and the Owners' Expert Witness in the original appeal. The Affidavit included the following four Exhibits:

- The TLAB Decision issued February 5, 2018;
- Zoning Examiner's Notice dated October 8, 2021; and
- A Revised Site Plan Drawing A1; and
- A supporting letter from the neighbour at 76 Kimbark Blvd.

In response to the request from the Owners, I directed Tribunal staff to canvas the Parties and Participants for their availability for a Teleconference call to address this matter. Following a thorough canvassing, staff advised me that none of the Parties or Participants were interested in attending the Teleconference call, except for the owners of the subject property.

The TLAB set January 14, 2022, at 1:30 pm for the call and the only person to attend was Ms. Janice Robinson who did so on behalf of and at the direction of the Owners.

MATTERS IN ISSUE

There are two matters in issue regarding this request. The first deals with which Panel Member can take carriage of this request given that the decision-maker who issued the final appeal decision is no longer a Member and the Decision was issued almost four years ago.

The second issue is whether the request put to the TLAB by the owners of the subject property falls within the ambit of Rule 30 – Correcting Minor Errors in Decisions and Orders.

JURISDICTION

Rule 30 – Correcting Minor Errors in Decisions and Orders

30.1 – The TLAB may at any time and without prior notice to the Parties correct a technical or typographical error, error in calculation or similar minor error made in a Decision or order. There is no fee if a Party or Participant requests such corrections.

30.2 – Where a Party, after giving notice to all Parties, request clarification with respect to the meaning or intent of a decision the TLAB may provide such clarification.

EVIDENCE

At the beginning of the Teleconference call, I noted that the other Parties and Participants had been canvassed for their interest in attending the call, but all had advised the Tribunal that they were not interested in participating. I suggested that while this was inconvenient it was not unexpected as the appeal had been disposed of in early 2018.

I commented that I expected the owners of the subject property, Mr. and Mrs. Pesin, to be in attendance as that is what was TLAB staff were advised. Ms. Robinson apologized for their absence but suggested that she could provide further relevant information related to the request as she had filed an Affidavit.

Ms. Robinson reminded me that there had been a settlement with one of the abutting neighbours in the original appeal matter and that the primary issue in dispute with the residents at the time was the proposed large rear deck projection and not the rear landing and stairs.

She referred to her affidavit and while she opined that the rear deck landing and stairs, as constructed, are consistent with the spirit of the application and the intent of the approval, *City Zoning and Legal Services staff have concluded that **“they do not***

comply and that a minor variance would be required from the Committee of Adjustment in order for the property to be in compliance with the zoning by-law, as varied by the TLAB Decision and Order (my emphasis).” (Para. 8, Ms. Robinson’s Affidavit)

She submits that the rear deck landing as constructed complies with the approved variances, except that the Zoning Notice states that it is not in accordance with the TLAB Decision. Furthermore, she asserts that in her experience the language “*substantially in accordance with the revised plans*” allows for some flexibility when a development is constructed, and she is of the opinion that the revisions to the location of the landing and stairs are ‘minor’ in nature and fall within the meaning of ‘substantially’ as suggested in the Decision.

Finally, she noted that the owners of 76 Kimbark have provided a letter indicating they have no objection to the new location of the landing and stairs.

She recommends that the TLAB amend the final Decision to include the new Site Plan to correct the error in the architectural plans pursuant to Rule 30 so that no further variance application is required.

ANALYSIS, FINDINGS, REASONS

The Applicant/Appellant in this matter is asking for the TLAB’s help pursuant to Rule 30 of its Rules to correct the final Decision issued in February 2018 to avoid another application to the COA. Such a request is not unheard of but is rare and is generally considered in the arena of corrections to a referenced error or misprint of clearly recognizable dimension.

In this case, the request is unique since the decision in question was issued almost four years ago and authored by a former Member no longer part of the Tribunal Panel. Nevertheless, TLAB decisions and orders typically have at the end of the decisions the phrase: “*If difficulties arise in the implementation of this decision, the TLAB may be spoken to.*” Although this sentence was not included in the subject Decision, it is a courtesy that the Tribunal is open to consider.

I note that this type of invitation by the Tribunal is an effort to assist applicants and interested parties including, on occasion the Chief Building Official, in providing an expeditious method of disposing of implementation issues intended or not intended to be caused by the disposition.

It is not, however, an invitation to re-litigate or revise an aspect of the Decision that a Party finds inconvenient, unhelpful, problematic, or anticipatory of an issue. What is also not contemplated, by this type of invitation or right to request the correcting of minor errors in decisions and orders, is a rehearing of new information to affect a different disposition than is expressed in the Decision.

That said, the Rules do provide some latitude to revisit a decision and order, specifically Rule 30, above cited. However, where a request exceeds the scope of correcting “a technical error, error in calculation or similar error,” the TLAB must be mindful that its decisions are to be final and binding, not iterative in scope or application and not open request to outside of the ambit of that rule.

I find the request in this matter to be just that – an exceedance of the scope of Rule 30. I must consider the assessment of City Zoning and Legal staff who are of the opinion that the as-built rear deck landing and stairs do not comply as varied by the February 5, 2018, TLAB final Decision and, therefore, conclude that a variance application is the solution.

The request by the Owners is not, in my ‘minor’ at all, and not a consideration anticipated by the use of the ‘correcting’ capabilities expressed in the Rule.

DECISION AND ORDER

Consequently, I find the request by the owners of the subject property that the final Decision and Order be revised to reflect the Site Plan in Exhibit C of the Affidavit, with a view to achieving a changed Decision, does not lie within the parameters of Rule 30 or the Rules of the TLAB, as a matter of course. Tribunal decisions are to be final; they are not an iterative process to refine some private expectation of suitability.

The Decision and Order in this matter dated February 5, 2018, remains unchanged.

X



Dino Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar