

REVIEW REQUEST ORDER

Review Issue Date **Tuesday, March 22, 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): SHIN YEONG KANG

Applicant: SOUVIK MUKHERJEE

Property Address/Description: 120 HENDON AVE

Committee of Adjustment Case File: 20 143409 NNY 18 MV (A0274/20NY)

TLAB Case File Number: 20 202821 S45 18 TLAB

Decision Order Date: Wednesday, December 15, 2021

DECISION DELIVERED BY: S. Makuch

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This is a request for a review based on the assertion that the decision was erroneously made as a result of reliance on improper evidence.

BACKGROUND

The appeal itself related to permission to make alterations to an ancillary building and the review related to the assertion that the TLAB member improperly relied on evidence related to the height of the garage to be altered.

JURISDICTION

Below is the relevant TLAB Rule applicable to this request for review:

31.25 In considering whether to grant any remedy or make any other order (respecting a review) the TLAB shall consider whether the reasons and evidence provided by the Requesting Party are compelling and demonstrate the TLAB:

- a) acted outside of its jurisdiction;
- b) violated the rules of natural justice or procedural fairness;
- c) made an error of law or fact which would likely have resulted in a different Final Decision or final order;
- d) was deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different Final Decision or final order; or
- e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the Final Decision or final order which is the subject of the Review.

EVIDENCE AND ANALYSIS

The applicant argued for the review on the basis that the decision was in error because the member relied on the expert evidence of the appellant who was not an expert. It was argued that such evidence which related to the height of the building should not be relied upon as the witness: was not an expert, but rather an architectural technologist; had not filed the appropriate forms required of an expert; and gave biased evidence.

A careful reading of the decision demonstrates that the member, made reference to the height of the garage, but did not rely on the disputed evidence regarding height as a basis for his decision.

The member undertook a detailed examination of all aspects of the proposed variance and proposed alterations under the four tests of the Planning Act. He considered whether the variance; maintained the the general intent of the official plan and zoning bylaw, and whether the variance was appropriate and desirable and minor. And found that it did not meet the four tests for the reasons set out in his decision. In doing so his findings that the variance did not meet the four tests did not rely on the evidence of the appellant regarding the height of the garage. Moreover, the applicant gave no clear evidence at the hearing on the merits or the review hearing regarding the height of the existing garage upon which the Tlab member could have relied upon for his decision.

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In summary, at the review hearing the applicant gave no persuasive evidence to demonstrate that: the Tlab member erred in fact; heard and relied on false or misleading evidence; or was deprived of new evidence which was not available at the time of the original hearing which would in any way have affected his decision. The only substantive argument on review related to the appellant's evidence regarding height which was not disputed at the hearing on the merits. As a result I find there was no error of law or jurisdiction and no denial of natural justice or procedural fairness since as outlined above the evidence regarding height was not a basis for the decision.

DECISION AND ORDER

There is no error in the TLAB decision and the final TLAB decision in this matter is hereby confirmed.

X 

S. Makuch
Panel Chair, Toronto Local Appeal