

MOTION DECISION AND ORDER

Decision Issue Date: Thursday, April 14, 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): KANKU SABRINA MOELLA MUDINGAY

Applicant: ASHFORD CALDERDALE GROUP INC.

Property Address/Description: 95 LAWTON BOULEVARD

Committee of Adjustment Case File Number: 21 186037 STE 12 MV (A1091/21TEY)

TLAB Case File Number: 21 247305 S45 12 TLAB

Hearing date: Monday, May 16, 2022

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANT

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|-----------|-------------------------------|
| Appellant | Kanku Sabrina Moella Mudingay |
| Applicant | Ashford Calderdale Group inc. |
| Party | Ashford Calderdale Group inc. |

INTRODUCTION

This is a written motion to strike out an appeal by the tenant of an apartment unit on the grounds that the reasons for appeal set out no apparent land use planning grounds upon which TLAB could allow the appeal of part of it, that the appeal was not made in good faith, and was frivolous vexatious or for the purpose of delay. The basis of these assertions is that the appellant is a tenant and the reason for the appeal "is a landlord tenant issue and should be resolved before the Landlord Tenant Board Tribunal".

BACKGROUND

The variances requested relate to a side yard setback and front yard setbacks to permit the construction of a new front vestibule for the apartment building and front yard. However that reconstruction will also result in the closure of the front living room window of the appellant's unit. The owners of the apartment building informed the appellant that she would have move to an alternative unit while construction was occurring where she could stay permanently or move back to her original unit after construction was completed if she wished. The alternate unit would be on the fifth floor, at the same cost as her current unit.

MATTERS IN ISSUE

The main issue on the motion can be summarized as whether there is any planning grounds for the appeal. Essentially this issue is whether there is any basis upon which to evaluate the variances under the four tests of the Planning Act from the appellant's point of view.

JURISDICTION

There is no doubt that TLAB has jurisdiction to dismiss the appeal by way of motion under s. 45(17) of the Planning Act on the grounds set out above provided there is sufficient evidence supporting the motion. The evidence must demonstrate that there is no basis for TLAB to conclude that the variances do not maintain the general intent and purpose of the official plan and zoning bylaw, the variances are desirable for appropriate development and that the variances are minor.

EVIDENCE

The evidence presented by the applicant was that the appellant was served on numerous occasions with notice that this motion would be brought and the appellant did not respond until after the required date. The applicant's evidence stated that the appellant was offered alternate but equivalent accommodation at the same price as her current apartment which had to be vacated during construction. She could stay in the alternate apartment or return to her current unit which would no longer have a living room window. The appellant's grounds for appeal stated she wished to stay in her apartment and her response to the motion, which was filed late, was that she wanted to be heard by TLAB and that it was only fair that a tenant of fourteen years be heard.

ANALYSIS, FINDINGS, REASONS

I find that the tenant did not articulate her reasons for her appeal as clearly as she could have. However, she has a legitimate planning concern as to whether it is desirable and appropriate to grant variances which remove her living room window. I find that such variances may not be minor. In addition it is questionable whether

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
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variances which provide for such an alteration maintain the general intent of the Official Plan. Section 3.2.1 of the Official Plan provides that existing housing stock will be maintained and improved and that rental housing must be preserved.

I find that it is the purpose of the appeal provisions of section 45 to ensure that appellants have a fair hearing and that the appellant should have an opportunity to state her concerns. I do not, in this decision, find that she will be successful in her appeal; but I find only that on the facts before me that there are grounds for an appeal.

It is important that individuals involved in the City's planning process believe they have been dealt with fairly. The general purpose of the Official Plan I find is to preserve affordable rental housing and it is not unfair to require the applicants to justify variances which remove the appellant's living room window.

DECISION AND ORDER

The motion is denied.

X 

S. Makuch
Panel Chair, Toronto Local Appeal