

MOTION DECISION AND ORDER

Decision Issue Date Tuesday, May 31, 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): 1941120 ONTARIO LTD

Applicant(s): 1941120 ONTARIO LTD

Property Address/Description: 57 MAJOR ST

Committee of Adjustment File

Number(s): 20 138367 STE 11 MV (A0395/20TEY)

TLAB Case File Number(s): 20 209020 S45 11 TLAB

Hearing date: July 2, 2021 and September 1, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. GOPIKRISHNA

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
1941120 Ontario Ltd	Applicant/Owner/Appellant	Martin Mazierski
Maria Perin	Party	
Jenny Sit	Party	
Robert Brown	Expert Witness	
Derek Penslar	Participant	
Robin Penslar	Participant	

INTRODUCTION AND BACKGROUND

The purpose of this Motion Decision is to decide whether the following list of submissions made on May 24, 2022, by Maria Perin, a Party in opposition to the Appeal respecting 57 Major Street, can be included on the Record for the Proceeding to hear the Appeal respecting 57 Major Street:

1. Harbord Village housing data prepared by Toronto City Planning (Strategic Initiatives, Policy and Analysis, March 2016)

Harbord Village Property Data 2016.pdf.

2. Municipal map Data Map 50H-21, issued by the City of Toronto, Works and Emergency Services, Technical Services; Survey and Mapping Services, Mapping Services, Date on copy noted: Printed: Winter 2003 attached as:

Harbord Village - Municipal Map.pdf

3. Municipal map Data Map 50H-21, with shading to illustrate that city block between Major St. and Robert St. is the narrowest block in Harbord Village, and that its lane-ways are similarly the narrowest, making them inaccessible to emergency vehicles. attached as:

SKA - 03 - Block - Harbord Village - Municipal Map.pdf - Prepared by Maria Perin Date: April 27, 2022.

4. City of Toronto, Affordable Housing Administration, published affordable Housing rates, attached as:

Affordable Rent - Current City of Toronto Average Market Rents & Utility Allowances – City of Toronto.pdf

The Moving Party explains that this material supports their original response to the Appellant's Disclosure and Witness Statement, and testimony regarding comparable properties in Harbord Village. In addition, the additional material supports their position that the requested Variances increase fire and other health and safety risks, "which are relevant considerations for TLAB in evaluating whether the proposal satisfies the applicable legal requirements for a Minor Variance". Lastly, they state that the material, is pertinent to the discussion of whether or not the proposal meets the "desirability" component of the four part test under Section 45.1 of the Planning Act.

In the Applicant's Response to the Motion filed by Ms. Perin, dated May 16, 2022, the lawyer for the Responding Party (the Appellant), Mr. Marcin Mazierski's response is as follows:

**Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
TLAB Case File Number: 20 209020 S45 11 TLAB**

- 1) The Appellants will not oppose the Opposition's filing additional material to support their response regarding comparable properties in Harbord Village', " as long as the Applicant is permitted to counter the late filing (Response) with additional filings of its own (Reply), and all such filings are subjected to full cross-examination".
- 2) The Appellants request that the submissions in support of the Opposition's position that the requested variances increase fire and other health and safety risks, be refused, because "safety risks" are not a planning issue
- 3) The Appellants will not oppose the Opposition's request to file additional materials in support of their response regarding whether the Appellant's position that requested variance meets the desirability criterion of the four part test," , as long as the Applicant is permitted to counter the late filing (Response) with additional filings of its own (Reply) and that all such filings are subjected to Cross-Examination.

The Appellant's agreement and disagreement with the Moving Party's submissions on various issues, which are stated above, is followed by a critique, the details of which are not recited here, for reasons stated in the Analysis, Reasons and Findings Section. It is important to state that the Appellants believe that the City data submitted by the Moving Party, is not reliable or accurate, based on the lack of updated information, reflecting COA/TLAB decisions, and any other developments that took place after the data was compiled. The Appellants' taking exception to the Moving Party's submissions on safety factors, is explained as follows:

"The April 30, 2022 motion filed by Ms Perin requested an Order to permit the Parties in Opposition to file additional material to be submitted in evidence to support their position that the requested variance increases fire and other health and safety risks, the additional material in this instance being the 'Harbord Village - Municipal Map' and the marked-up 'SKA- 03 Block Harbord Village - Municipal Map'. Minor variance appeals are not concerned with emergency vehicle access, which is dealt with by the city departments outside of the realm of zoning."

Mr. Mazierski also states that even if the Appellant was applying for a laneway suite (which he took care to emphasize is not the case with this Appeal) , , then emergency vehicle access would not fall under zoning review, but would instead be "dealt with" by City departments outside of the realm of zoning, and submitted documentation from the City of Toronto, dated April 26, 2018, which supports the Appellant's stance.

In her Reply to the Response to the original Motion dated May 20, 2022, Ms. Perin, the Moving Party, states that the Parties in Opposition, "support the submission of the City Planning Data to the TLAB, " without independent verification"", and said that where the COA or TLAB decision differs from the City Planning Data, the former would take precedence over the information in the City Planning Data. .

The Reply also states that the parties concur that the applicant has not applied for a laneway suite at this time, and the Applicants' own Witness Statement (paragraphs 23, 24, & 25) again raises the issue of meeting the City's need for affordable rental housing.

The Reply then offers a critique of the Appellant's data and comments made in response to the original Motion, which is not recited here, for reasons discussed in the Analysis, Findings and Reasons Section.

Lastly, the Reply points out that the units as per the applicant's drawings are being rented out as 4 bedroom apartments each. Currently the upper unit (primary unit) is rented out to four unrelated individuals. The ground floor (secondary unit) is also rented out to four unrelated individuals.

MATTERS IN ISSUE

The matters on which the TLAB needs to make a decision are recited at the beginning of the "Introduction and Background" Section, and are consequently not repeated here.

JURISDICTION

The TLAB follows its own Rules of Procedure and Process ("the Rules") in jurisdictional matters.

ANALYSIS, FINDINGS, REASONS

I begin my Analysis by noting that the list of submissions made by the Moving Party may be broadly classified into the following categories:

- Municipal data maps with housing data
- Municipal data maps to demonstrate that the City Block between Major Street and Robert Street is the narrowest in the Harbord Village community, which according to the Opposition, has safety implications.
- Information about the affordability of the Apartment Suites at the Site, and their correlation with the concept of "affordability".

When summarizing the Appellant's Response, it is important to note that they have not objected to the Opposition's filing additional material regarding comparable properties in Harbord Village. However, they assert that they should be allowed to submit material in response to the housing data submitted by the Opposition, and that all the material that has been submitted by the Opposition, as well as their own material, should be subject to cross-examination. In their Reply, the Moving Party acknowledges the possibility that the information may not be up to speed, but suggest that the data

may be “corrected” where faulty, by incorporating COA/TLAB decisions issued after the data was compiled.

The Appellant objects to the Moving Party’s introduction of background material pertinent to safety issues, because such health and safety issues are “not planning matters”. They discuss a hypothetical situation, where health and safety situations, , would be not be examined by the Planning Department, even if the application were for a laneway house. I note that in their Reply, the Moving Party has not specifically defended the need to introduce the data pertinent to “safety”.

The Appellant does not object to the introduction of information by the Moving Party about the affordability, and desirability factors. It is interesting to note that both the Appellant, and the Moving Party commented and critiqued each other’s data, before disagreeing with each other. It is not important to repeat and analyze the critiques here, because the contents, while informative and interesting, are not necessary for making findings with respect to the Motion before me- such wrangling is best left for the Hearing, where it can be addressed by way of evidence.

Lastly, it is important to note that the Moving Party has not objected to the introduction of new information by the Appellant, in their Reply.

Given the above analysis of the positions of the Parties, I find that

- Items 1 and 4 from the list of submissions put forward by the Moving Party, may be admitted, and included in the Record for the Proceeding respecting 57 Major Street. The Items to be included in the record are specifically named below:

1. Harbord Village housing data prepared by Toronto City Planning (Strategic Initiatives, Policy and Analysis, March 2016)

Harbord Village Property Data 2016.pdf.

4. City of Toronto, Affordable Housing Administration, published affordable Housing rates, attached as:

Affordable Rent - Current City of Toronto Average Market Rents & Utility Allowances – City of Toronto.pdf

I find that the Items listed above are pertinent to the Hearing because they provide pertinent planning data, which lies within the jurisdiction of the TLAB. In addition, it is important to note that the Appellant has not objected to the inclusion of this data.

- Items 2 and 3 from the list of submissions put forward by the Moving Party, may be excluded from the Record for the Proceeding respecting 57 Major Street. The specific listing of the items is as follows:

2. Municipal map Data Map 50H-21, issued by the City of Toronto, Works and Emergency Services, Technical Services; Survey and Mapping Services, Mapping Services, Date on copy noted: Printed: Winter 2003 attached as:

Harbord Village - Municipal Map.pdf

3. Municipal map Data Map 50H-21, with shading to illustrate that city block between Major St. and Robert St. is the narrowest block in Harbord Village, and that its lane-ways are similarly the narrowest, making them inaccessible to emergency vehicles. attached as:

SKA - 03 - Block - Harbord Village - Municipal Map.pdf - Prepared by Maria Perin Date: April 27, 2022.

I find that these materials should be excluded because they focus on Health and Safety issues, which do not constitute planning matters. While I respect the Moving Party's conclusions that these matters are important, and *should* (my emphasis) be considered for decision making purposes, they have not contradicted the Applicant's position that safety issues are not a planning matter, and are consequently outside the TLAB's jurisdiction.

The Appellant suggests that in the interest of fairness, they should be allowed to introduce other materials onto the Record, in support of their position, and that it would be proper to test both the material submitted by the Moving Party, as well as their own submissions, by way of Cross-Examination at the Hearing. While I agree that in principle that they should be able to introduce information in support of their position onto the Record, especially when the Opposition has been given an opportunity to do so, I find that such additions to the Record are best addressed through a specific Motion put forward by the Appellant. While I understand that any information put forward by the Appellant, would be in support of their position, on an issue of relevance to the Proceeding, and within the jurisdiction of the TLAB, it is impossible to predict how this information will manifest itself, and how relevant will the extra information be, from an evidentiary perspective- the expression "The devil is in the details" best summarizes my caution at including materials that are ostensibly relevant, but whose details are unknown to me at this point in time. Consequently, I find that it would not be appropriate to issue an Interim Order that allows the Appellant to introduce any material **at any point in time** (my emphasis), irrespective of how relevant it may be to the outcome. Consequently, I find that the Appellant can bring forward a Motion to introduce any new material they want to by way of a Motion, which is in agreement with Section 17 (Motions) of the TLAB's Rules of Practice and Procedure (the "Rules").

It is trite to state with that all materials and submissions, included in the Record, can be used for the purposes of Examination-in-Chief, Cross-Examination, and Re-Examination by the Parties- however, this finding is being stated in the Interim Decision and Order below with an abundance of caution.

MOTION DECISION AND ORDER

- 1) The following information submitted by the Moving Party will be included in the Record for the Appeal respecting 57 Major Street:
 1. Harbord Village housing data prepared by Toronto City Planning (Strategic Initiatives, Policy and Analysis, March 2016)

Harbord Village Property Data 2016.pdf.
 4. City of Toronto, Affordable Housing Administration, published affordable Housing rates, attached as:

Affordable Rent - Current City of Toronto Average Market Rents & Utility Allowances – City of Toronto.pdf
- 2) The following information submitted by the Moving Party will be excluded from the record for the Appeal respecting 57 Major Street:
 2. Municipal map Data Map 50H-21, issued by the City of Toronto, Works and Emergency Services, Technical Services; Survey and Mapping Services, Mapping Services, Date on copy noted: Printed: Winter 2003 attached as:

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SKA - 03 - Block - Harbord Village - Municipal Map.pdf - Prepared by Maria Perin Date: April 27, 2022.
- 3) The Appellant may submit a Motion, in accordance with Section 17 of the TLAB's Rules, to introduce new material onto the Record respecting the Appeal at 57 Major Street. Once any material has been included as part of the Record, it may be used for evidentiary purposes, by the Parties, through an Examination-in-Chief, Cross-Examination, or Re-Examination.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body