

MOTION DECISION AND ORDER

Decision Issue Date Wednesday, August 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): PIERRE MAYNIAL

Applicant: C2 PLANNING LAND USE PLANNERS

Property Address/Description: 359 ½ SACKVILLE STREET

Committee of Adjustment Case File Number: 20 212888 STE 13 MV (A0995/20TEY)

TLAB Case File Number: 22 147633 S45 13 TLAB

HEARING DATE: Wednesday, August 17, 2022

DECISION DELIVERED BY TLAB Panel Member C. Wong

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Pierre Maynial
Applicant	C2 Planning Land Use Planners
Party	Sundus Balata
Party	Christopher Murray
Party's Legal Rep.	Ian Flett
Expert Witness	Christian Chan

INTRODUCTION AND CONTEXT

On April 27, 2022, the Committee of Adjustment approved of the requested variances to the Zoning by-law, for 359 ½ Sackville Street (subject property):

1. Chapter 10.10.40.1(2), By-law 569-2013

The maximum permitted number of residential buildings on a lot in an R zone is one.

In this case, the number of residential buildings on the lot will be two.

2. Chapter 10.10.40.1.(5)(A), By-law 569-2013

A building or an addition is not permitted to the rear, where not attached above grade to the original part of the building and contains a dwelling unit. In this case, the building will be located to the rear of the original building.

3. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth for a detached house is 17 m.

The new building will have a depth measuring 22.4 m, measured to the rear wall of the house behind a house.

4. Chapter 10.10.40.70.(2), By-law 569-2013

The minimum required rear yard setback is 7.5 m.

The new building will be located 0.32 m from the rear (east) lot line.

5. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013

The minimum required side yard setback for a detached house is 0.9 m.

The new building will be located 0 m from the side (north and south) lot lines.

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

The minimum required number of parking spaces is one for each dwelling unit (two total parking spaces). In this case, one parking space will be provided.

The decision was subject to the following conditions:

- (1) Garbage bins shall be stored inside the second residential building.
- (2) The stairs and second-storey landing on the west elevation of the proposed second residential building shall be constructed with opaque privacy screening or fencing that is permanent, located on the west and south edges of the stairs and landing, to a minimum height of 1.5 m, measured from the floor of the stairs and landing.
- (3) Prior to the issuance of a building permit, the applicant/owner shall comply, to the satisfaction of the Chief Engineer and Executive Director, Engineering & Construction Services, with the following:
 - (i) Submit revised plans to show the following along with the respective dimensions:
 - (a) The proposed second residential building will be separately municipally serviced (water and sanitary);
 - (b) Fire access route(s) which must be clearly labelled as such, for the proposed building from the municipal street without interior access between separate units, the distance from the fire vehicle to one entrance of each unit to be no greater than 45 m. Based on this, the following must be provided:
 - The unobstructed path of travel from Spruce Street (Fire Truck Location) is to be maximum of 45 m to the nearest municipal street and a fire hydrant must be located within 90 m of the main entrance of the building entrance; and
 - Access to the building entrance from Spruces is to be via a 1 m wide (minimum) "private walkway", with an unobstructed 2.1 m underside

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clearance height and surfaced such that it can be used all weather and seasons (note: grass is not acceptable).

(i) Obtaining separate approval from Right of Way Management for the proposed canopy which encroaches over the public right-of-way.

(ii) Prior to the issuance of a building permit, the applicant apply for and obtain municipal numbering.

(4) The applicant shall plant a medium sized tree (native species) in the rear of the property with a minimum diameter of 50 mm (approximately. 5 cm), 1.5 m away from any fences or surrounding structures to the satisfaction of the Director, Community Planning, Toronto and East York District.

(5) Two bicycle parking spaces shall be provided on the subject property.

(6) The second residential building shall be constructed substantially in accordance with the plans date stamped received by the Committee of Adjustment on April 25, 2022. Any other variances that may appear on these plans and are not listed in the written decision are NOT authorized.

The then owner of the neighbouring property (359 Sackville Street), Mr. Pierre Maynial, appealed the COA decision on May 16, 2022. After filing the appeal, Mr. Maynial did not hire a lawyer, an expert, or submit any materials to support his appeal. He subsequently sold the property, to Ms. Sundus Balata on July 12, 2022, who has filed a notice of motion to adjourn the scheduled hearing, requesting more time to prepare for the appeal.

The owner of the subject property, Mr. Christopher Murray, responded with a request to dismiss the motion for adjournment, and further moved to dismiss the appeal.

THE LEGISLATIVE AND POLICY FRAMEWORK

Provincial Policy Statement – *Planning Act S. 3*

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – *Planning Act S. 45(1)*

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Statutory Powers Procedure Act

Under the *Statutory Powers Procedure Act*, TLAB follows its own Rules of Practice and Procedure, which outline the procedure for appeal, including the required steps and timelines to follow.

ISSUES, ANALYSIS, FINDINGS, REASONS

Issue: Motion to Adjourn

An Appeal of the Committee of Adjustment's decision is privilege. If one appeals a Committee of Adjustment decision, one has a duty to fulfill and comply with the requirements of the Toronto Local Appeal Body in a manner that is efficient and respectful of City resources. One need not be a legal or planning expert, but one must avail oneself of the support one needs and communicate one's needs with the TLAB in a timely manner.

Late filing and the request for Adjournment both contribute to a backlog in the system, which reduce the accessibility of justice. If one accepts a scheduled hearing date and does not use it, this deprives other members of the public of the opportunity to have their matter heard and decided. The TLAB has a very high case load. Appeals to TLAB that are frivolous, vexatious, or not in good faith, are not tolerated.

As TLAB strives to be highly transparent, accessible to all people, and to serve the broad public interest. In its Notice of Hearing, it provides an overview of the steps and dates that are required under the *Planning Act*, as well as clear email and phone information for those who have accessibility or other concerns. TLAB has also issued Practice Directions, linked to our main webpage: <https://www.toronto.ca/city-government/planning-development/committee-of-adjustment/appeals/>. To ensure the public understands the importance of their responsibilities in undertaking an Appeal, it has provided Practice Direction 7 – Late Filings: <https://www.toronto.ca/city-government/planning-development/committee-of-adjustment/appeals/toronto-local-appeal-body-practice-directions/>

In this case, the owner of the neighboring property, where impugned impacts may occur, has changed. This may create a disruption in the process of appeal. The new owner is faced with the reportedly unexpected challenge of assembling the appeal begun by the previous owner, in a shortened timeframe.

The owner of the subject property, whose application was initially approved by the Committee of Adjustment, however, has been delayed by the appeal. In addition, he has hired legal representation and followed all the deadlines for document disclosure. It would be a prejudice against him, in this *de novo* case at the TLAB, to allow the new owner of the neighboring property to receive more time to review his expert documents

and respond in an adjourned, rescheduled hearing. This would be contrary to the intent of the deadlines for filing Expert Statements and Document Disclosure and would not afford procedural fairness.

I do not order an adjournment.

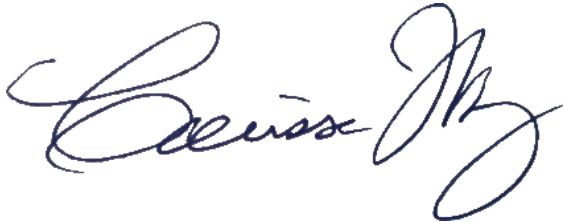
Issue: Motion to Dismiss

Mr. Maynial, the former owner of the neighbouring property was sufficiently concerned by the impacts of the proposed developments at the subject property to launch an appeal of the COA decision. Ms. Balata denies knowing of this appeal at the time of purchasing the property (and Mr. Maynial's recent response to Mr. Murray's motion indicates she did not). She is sufficiently concerned with the potential impacts of the proposed development to make a motion for adjournment to prepare for a full hearing. Having just purchased a property which may be affected by the subject property, she needs the opportunity to raise her concerns and interests at a TLAB hearing. Mr. Maynial has now also filed a timely response to the motion to dismiss the appeal and is working with Ms. Balata in hiring experts to support his appeal.

I do not order a dismissal of the appeal.

DECISION AND ORDER

The hearing of the appeal will proceed as scheduled, on September 19, 2022.



X

C. Wong
Panel Chair, Toronto Local Appeal Body