

DECISION AND ORDER

Decision Issue Date Monday, October 24, 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): CITY OF TORONTO

Applicant(s): MARK LILLEY

Property Address/Description: 22 NINTH ST.

Committee of Adjustment File

Number(s): 22 117100 WET 03 MV (A0152/22EYK)

TLAB Case File Number(s): 22 145535 S45 03 TLAB

Hearing date: September 27, 2022

DECISION DELIVERED BY TLAB Panel Member Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant	CITY OF TORONTO
Appellant's Legal Rep	JESSICA JAKUBOWSKI
Applicant	MARK LILLEY
Owner	AMIE LYNN KEE
Participant	SHEILA MASTERS
Participant.	KAREN ADAMS
Participant.	DAVID JACKMAN
Participant's Legal Rep.	CHRIS FORAN

INTRODUCTION AND CONTEXT

This is an appeal by the City of Toronto (Appellant) from a decision of the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) approving two (2) variances to permit the Applicant to construct a second and third storey addition above the existing residential dwelling at 22 Ninth Street (subject property).

The subject property is located south of Lake Shore Boulevard West on the west side of Ninth Street. It is designated *Neighbourhoods* in the Official Plan (OP) and is zoned Residential Multiple Dwelling Zone (RM) under the city-wide Zoning By-law 569-2013.

At the outset, I advised that pursuant to Council's direction, I attended the site, walked the surrounding neighbourhood, and reviewed all of the pre-filed materials although it is the evidence to be heard that is of importance.

The City filed their Appeal with the Toronto Local Appeal Body (TLAB) on May 11, 2022, and the TLAB set a Hearing date for September 27, 2022, to hear the matter.

In attendance at the Hearing were the following individuals: Amie Lynn Kee (Owner), Jessica Jakubowski, the City's legal counsel, and Participants Karen Adams, and Sheila Masters.

However, on August 10, 2022, by way of email, the City advised the TLAB that the owner of the subject property, Ms. Kee, had informed them that she would not be moving forward with the proposed development and the variances being requested. Rather, the owner intended to pursue the development of the subject property as an 'as-of-right' construction that eliminated all variances.

Furthermore, the City confirmed that given the 'as-of-right' development now being considered by the owner, the Applicant would not be providing planning evidence to the TLAB regarding the appropriate tests under s. 45(1) the *Planning Act*.

As a result, and with the consent of the Owner and Applicant, the City requested that the TLAB:

- 1) Allow the City's appeal of the decision of the COA; and
- 2) Issue an Order refusing the variances approved by the Committee of Adjustment in its decision dated April 21, 2022 and set aside that decision.

THE LEGISLATIVE AND POLICY FRAMEWORK

Provincial Policy – 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 – 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.

SUMMARY OF EVIDENCE

At the Hearing, Ms. Kee confirmed that she did not intend to move forward with the development application that was before the COA and approved for the two variances for Floor Space Index (FSI) and the height of exterior main wall heights facing a side lot line.

She has now revised her proposal so that it will be constructed ‘as-of-right’ thereby eliminating the two previous variances requested and eliminating the need for any variances.

Ms. Kee also confirmed that she would not be providing any planning evidence given that her revised plans do not require any variances.

Ms. Jakubowski, representing the City, confirmed that the revised plans being proposed by the Owner were, indeed, an ‘as-of-right’ construction and that the redesign has resulted in the elimination of variances which she also advised that the City’s Zoning Examiner had confirmed.

Ms. Jakubowski reiterated to the TLAB the City’s position expressed in her August 10th email that since the Owner’s revised plans eliminated the variances previously approved by the COA, and she does not intend to proceed with the Application as appealed to the TLAB, the Tribunal allow the City’s appeal and set aside the decision of the COA.

I also heard from Participants Adams and Masters. While both had not fully understood that the Owner of the subject property intended to proceed with an ‘as-of-right’ development without the need for variances they did, nevertheless, express concerns that the revised proposal was not in keeping and did not ‘fit’ with the prevailing character of the neighbourhood.

Although they ultimately appreciated the concept of an ‘as-of-right’ development and that the Applicant was no longer seeking approval from the TLAB, they questioned how the Owner’s plans would be monitored by the City. Ms. Jakubowski briefly

confirmed the building permitting process that the Owner would be required to engage in and the responsibilities of the City Building Department in that process.

ISSUES AND ANALYSIS

It is the Applicant that had requested that the TLAB grant variances to the use of the land, building or structure as vested in the jurisdiction of the Tribunal expressed in s.45(1) of the *Planning Act*.

Therefore, the burden rests squarely on the Applicant to prove its case, even where the COA has previously authorized the requested variances. It is the Applicant's responsibility, then, to put before the TLAB the evidence necessary to enable the Tribunal to make findings required by the Act.

However, in the matter before the TLAB, the Owner has advised that she is no longer going forward with the Application for the variances previously sought and approved before the COA, as she intends to build 'as-of-right'. The Appellant, the City, confirms this to be the case. The City, on the consent of the property owner, requests that the appeal be allowed, the variances be refused, and the COA decision mailed on April 29, 2022, be set aside.

CONCLUSION

Therefore, absent any evidence, I have no basis upon which to find that the Application before the TLAB satisfies any of the four statutory tests outlined in the *Act*. Consequently, I am prepared to grant the request put forward by the City and allow the appeal and refuse the variances approved by the Committee of Adjustment.

DECISION AND ORDER

The appeal is allowed, the variances approved by the Committee of Adjustment in the decision dated April 21, 2022, are refused, and the Committee of Adjustment decision is set aside.

X 

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