

INTRODUCTION AND CONTEXT

Inroads Consultants is the owner of 502 Atlas Avenue, located in Ward 12 (Toronto- St. Paul's). In order to sever the existing lot, and build a detached dwelling on each of the resulting lots, Inroad Consultants applied to the Committee of Adjustment (henceforth COA) for a consent to sever the existing lot, as well as the approval of variances that would allow them to construct the detached dwellings. It is important to note that one of the proposed lots would face Winona Avenue, while the other proposed lot would face Winona Drive.

The COA heard the Applications on December 1, 2021, and approved the Consent to sever the existing lot, with conditions attached to the approval of the Consent. With respect to the resulting lot that would face Winona Drive , the COA approved all the requested seven variances, with a condition that the site plan drawings demonstrate the driveway slope of the proposed dwelling fronting Winona Drive as being 2%-4% from curb line to the proposed garage entrance. Mr. Saren Singham, who resides at 667 Winona Avenue appealed the decision made by the COA respecting the variances on the lot facing Winona Avenue, to the TLAB- it is important to note that he did not appeal the other two decisions made by the COA, respecting the Consent to Sever, and requested variances on the lot facing Atlas Avenue.

The COA refused all variances with respect to the lot that would face Atlas Avenue, , with the exception of the variance respecting the lot front/area, which was approved-by way of an editorial note, the approval of this variance is consistent with the result of what is approved by way of the Consent to Sever.

The Applicant appealed all the decisions made by the COA to the TLAB, "to maintain control of the ability to modify any of the applications during the course of the TLAB proceeding".

A week before the Hearing, I was made aware by the TLAB Staff about a letter from Ms. Amber Stewart, Counsel for the Applicant, stating the latter's desire to withdraw the Application respecting the Consent.

At the Webex platform based virtual Hearing held on July 20, 2022, the Applicants were represented by Ms. Amber Stewart, a lawyer, and Mr. Franco Romano, a planner, while Mr. Singham represented himself. Mr. Singham confirmed that he had not submitted a Witness Statement, and added that he was "in the Hospital to undergo surgery"

I pointed out to the Applicants that the variances respecting the lot area for the lots were still in play before the TLAB, because of the *de novo* nature of the Appeal , which required that a decision be made about each and every of the variances, irrespective of the decision made by the COA. Given that all the requested variances could be refused

in theory by the TLAB, even if they had been approved by the COA, I asked Ms. Stewart about the consequence for the Applicant, if all the requested variance, pertaining to the lot area were refused by the TLAB, which meant that the decision made by the COA on the consent, would contradict the TLAB's findings on the variances.

Ms. Stewart's explanation was that once the TLAB accepted the withdrawal of the Consent to Sever Appeal, the consent would be deemed to be final and binding, then under the Planning Act, with the result that the Applicant "could sell the lots if necessary". She also pointed out that while the COA could impose a condition stating that the approval of the Consent to Sever would not be final till the approval of any variances required to build houses on the Lots, "the COA did not impose such a condition in this case". She added that she could find decisions made by the COA, where such a condition (i.e. the finalization of the Consent to Sever, subject to the approval of the variances for the dwellings to be constructed on the severed lots) had been imposed.

Given that Mr. Singham was not able to participate in the Hearing since he was in hospital for a surgery, I adjourned the Hearing, and asked Ms. Stewart to make written submissions regarding the Motion to withdraw the Application to sever the property, in order to better follow her reasoning, before making a decision to accept the withdrawal.

On July 22, 2022, Ms. Stewart submitted materials in support of her Motion, the highlights of which are recited below:

After a description of the events that resulted in the Appeals being launched for three properties to the TLAB, Ms. Stewart discussed the legal effect of the withdrawal of the Appeal, with respect to Section 33 of the Planning Act:

53. (33) If all appeals under subsection (19) or 27 are dismissed or withdrawn, the Tribunal shall notify the council or the Minister, and subject to subsection (23), the decision of the council, or the Minister to give or refuse a provisional consent in final.

Ms. Stewart asserts that as a result of Section 53(33), the TLAB no longer retains jurisdiction of the consent Application, if it consented to the withdrawal of the corresponding Appeal. She included a copy of the Final Decision made by Vice-Chair Bassios, respecting 32 Roseland Drive, where her (i.e. Ms. Stewart) clients, who were the Applicants in this matter, had obtained approval of the consent to sever the property, as well as variances to build houses on the resulting lots, from the COA, after which one of the neighbours appealed the COA's decision on one of the lots, to the TLAB. As a result of the ensuing Settlement discussions between the Parties which were successful, the Appellants withdrew their Appeal, resulting in a Settlement Hearing before the TLAB.

Ms. Stewart also included a copy of the COA decision respecting 125 Donside Drive, a decision dating back to 2014, where the COA approved the Consent to Sever was approved, and imposed a number of conditions, including "***The owner shall obtain***

Final and Binding Decisions on minor variance applications A016/14 SC, to the satisfaction of the Deputy Secretary- Treasurer, Committee of Adjustment, Scarborough Panel.”

ISSUES AND ANALYSIS

The specific question asked of the Applicants by me at the Hearing was the consequence of the withdrawal of the Consent to Sever Appeal, on the other Appeals before the TLAB, both of which relate to the variances requested for the dwellings to be built on the resulting lots, one of which faces Winona Avenue, and the other facing Atlas Avenue. Given that there continue to be variances respecting for the lot areas before the TLAB, notwithstanding the finalization of the result of the Consent to Sever as a result of the withdrawal of the Appeal, I was interested in the understanding the outcome of what would happen if the TLAB refused the variances respecting the lot areas, because *prima facie*, there would be a logical contradiction between the findings made by the COA regarding the Consent to Sever application.

The written submissions sent in by the Applicants referred me to Section 53(33) of the OP, which was interpreted to mean that if the Appeals under Sub-sections 53(19) and 53 (27) are withdrawn, then the decision of the COA becomes final and binding. While I acknowledge, and agree with the Applicants that there are no objections to the withdrawal of the Appeal from the opposition, I find that no inferences may be drawn about the appropriateness of the variances before the TLAB, on the basis of the ostensible lack of opposition.

Reading the Decision respecting the Appeal respecting 32 Roseland, makes me find that this Appeal was resolved as a Settlement before the TLAB, because of the successful negotiation between the Applicants, and the Appellants, who as I understand, objected to only the variances requested for the house to be built on one of the two lots emerging from the Consent to Sever application. While the common factor between the Appeal before me, and one respecting 32 Roseland, is that the Opposition objects to variances only on one of the houses to be built on the resulting lots, there is a significant difference. A Settlement was reached in the case of 32 Roseland, whereas I am not aware of any Settlement being reached regarding the disputed variances at the proposed house which will face Winona Avenue. For the Decision respecting 32 Roseland Drive to be applicable to the Appeal before me, it would have been necessary for a Settlement to be reached between the Parties in this Appeal, and the consequent withdrawal of the latter.

The resulting asymmetry in the fact base of the Appeals results in my not awarding any weight to the result of the Appeal respecting 32 Roseland Avenue.

A perusal of the conditions imposed by the COA in the severance respecting 125 Donside Drive, and the conditions imposed by the COA in the severance, that is sought to be withdrawn by the Applicants here, helps me appreciate the key difference between the two scenarios- while there are many approvals of a Consent to sever a property

which link the finalization of the Consent, to the approval of variances of the houses to be built on the emerging lots, there are some examples where the COA did not impose such conditions on the finalization of the consent to sever. In other words, the consent to sever, and the approval of variances to help build houses on the emerging lots, become independent of each other, and the former can be completed in, and of itself, without reference to the latter.

As a result, I recognize the withdrawal of the Appeal respecting the Consent to Sever the Subject Lot at 502 Atlas Avenue by the Applicant, resulting in a closure of the TLAB file corresponding to this matter. I also find that the decision made by the COA regarding the consent to sever the lot at 502 Atlas Avenue is final, and binding.

The Proceeding before the TLAB, scheduled to be heard on October 31, 2022 will restrict itself to the variances respecting the two lots resulting from the successful Consent to Sever Application, where one lot faces Atlas Avenue, and the other faces Winona Drive.

The Party in opposition to the variances respecting the house to be built on the lot facing Winona Drive, Mr. Singham, is given time till October 25, 2022 to file a Witness Statement explaining his opposition to the house that will be constructed next to his property. The Witness Statement in question, should outline the planning reasons explaining why Mr. Singham advises that some, or all the variances requested by the Applicant, should not be approved- the Statement can include both written material, photographs, and pictures. The planning reasons put forward by Mr. Singham should correspond to the four tests under Section 45.1 of the Planning Act, which can be found in the decision issued by the COA, in December 2021, after hearing the Application. It is important that this Witness Statement be sent electronically to the TLAB, as well as served electronically on the Applicants.

I would like to encourage the Parties to have discussions among themselves, between now and the Hearing scheduled for October 31, 2022, to see if their differences can be resolved, and a Settlement can be arrived at, before the commencement of the Hearing.

Should the Parties not arrive at a Settlement, my preference would be for the Opposition to present its evidence first, followed by the Applicants. In such a case, the Applicants can focus on the issues brought up by the Opposition in detail, while discussing other issues at a high level. .

MOTION DECISION AND ORDER

1. The Appeal respecting the Consent to Sever the lot at 502 Atlas Avenue is now dismissed, as a result of the Appellant's specifically withdrawing this Appeal. The Committee of Adjustment decision dated December 1, 2021, with respect to the Severance Application for 502 Atlas Avenue, is now final and binding, and

Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 21 249817 S53 12 TLAB, 21 249818 S45 12 TLAB,
21 249819 S45 12 TLAB

the corresponding file of the Toronto Local Appeal Body is closed. No further submissions are required with respect to the Consent to Sever Application.

2. The Proceeding scheduled for October 31, 2022, will be restricted to the Appeals respecting the requested variances for the houses to be built on each of the lots resulting from the Severance Application.
3. The Party in Opposition to the requested variance for the Lot facing Winona Drive needs to submit their Witness Statement electronically to the TLAB, as well as the Applicants, by the end of day on October 25, 2022.
4. Should the Parties not be successful at settling their differences to arrive at a Settlement before the commencement of the Hearing, the Opposition will provide their evidence first at the Hearing scheduled for October 31, 2022, followed by the Applicants.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body