

# DECISION AND ORDER

**Decision Issue Date**      Thursday, December 01, 2022

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s):                      DAVID VITO EMILE VIOLANTE & MICHAEL SPARLING

Applicant(s):                      IN ROADS CONSULTANTS

Subject(s):                         45(1)

Property Address/Description: 90 SUMACH STREET (UNITS 703 & 704)

Committee of Adjustment File

Number(s):                         22 103900 STE 13 MV (A0147/22TEY) (UNIT 703)

22 107165 STE 13 MV (A0164/22TEY) (UNIT 704)

**22 150477 S45 13 TLAB (UNIT 703)**

TLAB Case File Number(s):    **22 150485 S45 13 TLAB (UNIT 704)**

**Hearing date: October 5, 2022 & November 16, 2022**

**DECISION DELIVERED BY TLAB Panel Member S. Makuch**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	In Roads Consultants
Appellant	David Vito Emile Violante
Appellant's Legal Rep	Andy Margaritis
Appellant	Michael Sparling
Appellant's Legal Rep	Andy Margaritis
Participant	Karen Snyder



## **THE LEGISLATIVE AND POLICY FRAMEWORK**

The relevant legislative provisions are as follows.

### **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**

The evidence of a qualified land use planner in favour of the appeal was clear. The enclosures had already been partially built without proper approvals. This, however, should not affect my decision regarding this appeal. I agree. It was clear as well that, in spite of concerns expressed by the owners in opposition, views from the common area or the neighbouring owner's roof top deck would not be significantly impaired as fences over six feet high enclosed most of the decks. It was clear as well that structures such as gazebos and pergolas had been built over other roof top decks. Indeed one "dog house" in a corner of the roof had been enlarged and enclosed without proper permission. There were also large and high enclosures for mechanical purposes. He also gave evidence, with which I agree, that site specific zoning bylaws have been varied and that I should take into account intensification and approvals which had occurred since the bylaw had been passed.

Much of the evidence in opposition was not very helpful. It focused on engineering concerns such as flooding and building permit compliance. Other evidence in opposition focused on the lack of proper planning approval for the construction which had occurred and the lack of proper consultation. While these concerns are understandable they do not address the tests outlined above. There was no clear

evidence of any negative impact on views or shadow. Evidence of the condominium corporation's handling the construction was also not compelling.

There were, however, submissions from Ms. Snyder and Ms. Marshall which, in effect, related to the purpose of the site specific bylaw. They believed that the bylaw restrictions were to ensure that the roof top was kept as open space and not used for enclosed residential space. To approve the variances would allow a significant change in the character of the roof and result in additional residential enclosures. Open space would be replaced by enclosed space, six foot wooden fences would be replaced by ten foot concrete walls and patios or gardens would be changed to living rooms.

## ISSUES AND ANALYSIS

I am persuaded by Ms. Snyder's and Ms Marshall's concerns. I find that a general intent of the bylaw is that the roof should remain open and not be a series of enclosed livable spaces made part of the units below them. It appears from a reading of the restrictions in the bylaw that the general intent and purpose of the bylaw is to maintain the character or ambiance of the roof as open space and not enclosed living rooms. The restriction on height permits the height of the "dog houses". The density permits the original size of the "dog houses". These restrictions I find are based on a general intent of the bylaw to have the roof remain as open space. While there is no physical impact in terms of shadow, oversight or loss of views, approval of the variances would result in a loss of the open space character the bylaw was intended to protect. Moreover, it would set a precedent for additional enclosures.

## CONCLUSION

In conclusion, I find that the variances fail the test of meeting the general intent or purpose of the bylaw by allowing construction of enclosed space on the roof which is contrary to the general intent and purpose of the bylaw. That general intent is to have a roof where open space is maintained. Enclosure of the roof would require a zoning bylaw amendment.

## DECISION AND ORDER

The appeal is denied and the decision of the Committee of Adjustment is upheld.

X 

---

S. Makuch  
Panel Chair, Toronto Local Appeal