

MEDIATION SUMMARY

Mediation Summary Date: Tuesday, November 1, 2022

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

Appellant(s): JULI ANN ABOUCHAR
Applicant: ALI SHAMS
Property Address/Description: 12 OTTER CRES
Committee of Adjustment Case File Number: 22 120565 NNY 08 MV (A0176/22NY)
TLAB Case File Number: 22 161107 S45 08 TLAB

Mediation Date: Wednesday, October 27, 2021

MEDIATION SUMMARY DELIVERED BY D. LOMBARDI

APPEARANCES

Applicant	ALI SHAMS
Appellant	JULI ANN ABOUCHAR
Owner / Party	MOHAMMAD REZA SABER
Party's Legal Rep	MARCIN (MARTIN) MAZIERSKI
Party (TLAB)	CRAIG WARREN
Party (TLAB)	ELI AARON
Party's Legal Rep	ELISE HERTZ
Party (TLAB)	SHARENE C DAVIDSON
Expert Witness	JOHNATHAN BENCZKOWSKI

INTRODUCTION AND CONTEXT

On May 26, 2022, the North York Panel of the Committee of Adjustment (COA) granted, on condition, the application submitted by Ali Shams (Applicant) requesting six (6) variances in total, five (5) from the harmonized City of Toronto (City) Zoning By-law 569-2013 and one (1) from the former City of North York Zoning By-law 7625 (Application), to construct a new dwelling at 12 Otter Crescent (subject property).

Juli Ann Abouchar (Appellant) appealed the COA decision to the Toronto Local Appeal Body (TLAB) and the TLAB issued a Notice of Hearing (Form 2) setting a Hearing date for November 10, 2022.

It became apparent to me following a review of the pre-filed materials in this matter that dialogue between the Owner (Mr. Saber) of the subject property and the abutting neighbours had been either non-existent or brief and inconsequential before and since the application was heard by the COA.

As the presiding Member and sensing an opportunity to encourage the Owner and neighbours to engage in dialogue regarding the proposal, I asked Court Services Tribunal staff to direct the Parties to attend non-binding, confidential, TLAB-led mediation pursuant to Rule 20.2 of the TLAB's *Rules of Practice and Procedure (Rules)*.

Subsequently, the TLAB set October 27, 2022, to conduct the Mediation session.

The session on October 27th was conducted virtually using the City's WebEx meeting platform. In attendance were the individuals listed under the 'Appearance' section, above, in this Mediation Summary. In addition, Mr. Michael Barton, the Appellant's Expert Planning Witness attended, as did Lou Radomski.

At the outset, the Parties expressed immediate interest in participating in the TLAB-led Mediation session and acknowledged that in doing so, they hoped that they could engage in meaningful and constructive dialogue to narrow the outstanding issues in dispute.

CONFIDENTIALITY

The Parties were advised that their respective interests and positions on the matters to be discussed in the Mediation session would remain confidential as per Rule 20.2 and 20.6 of the TLAB's *Rules*.

Rule 20.6 states that *"any information or documents provided or exchanged during a mediation and any discussion or exchange relating to the resolution of issues or offer to settle are and shall remain confidential and shall not be disclosed or entered into evidence in the same or any other proceedings. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into in any proceeding."*

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Furthermore, the Parties were advised that whether the Mediation was successful, the Applicant remains responsible at the hearing of the appeal to carry the burden of demonstrating that all the variances sought meet the statutory tests, due to the obligations of the TLAB.

The Parties acknowledged this duty to confidentiality but acquiesced to allow some general information to be noted in the Mediation Summary (Summary), herein, prepared by the presiding Member.

As a result, the DAR recording was paused to meet the TLAB confidentiality commitment. The Parties were advised that the recording would start post Mediation only to report the outcome of the Mediation session and to address an adjournment if required.

STATUS OF MATTERS DURING THE MEDIATION

Rule 19.1 of the TLAB's Rules underscores that the Tribunal is committed to encouraging Parties before it to settle some or all the issues in dispute by way of informal discussion, exchange, and Mediation. Under Rule 19.2, Parties who arrive at a settlement are required to serve the terms of that proposed settlement on all Parties and Participants and to file same with the TLAB at the earliest possible date.

The Mediation session consumed much of the day. The Parties in the subject matter participated in productive and civil discourse conducted by way of multiple, virtual 'in-camera, breakout' sessions. It became apparent early in the Mediation session that there were several issues of importance to the Appellant and to the Parties in opposition, already highlighted in the disclosure materials pre-filed by the opposing Parties in this matter.

Although the discussions that occurred seemed constructive and positive, at the end of the day the Parties were unable to arrive at a settlement of the issues in dispute and the Mediation session concluded.

However, due to the progress that had been made, I suggested, and the Parties agreed, that if there was an appetite to do so, the Parties should continue discussions privately and the TLAB would schedule a second Mediation date in November 2022 for the Parties to return. The Parties endorsed this approach and a date was canvassed and agreed to.

In the interim, the Parties agreed to exchange additional documentation in order to continue discussions, and a new Mediation date was tentatively set for Friday, November 18, 2022.

I would like to thank the Parties for their civility and cooperation throughout the Mediation session and their willingness to work towards possibly resolving the issues in dispute in this matter.

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Therefore, I have directed Court Services Tribunal staff to cancel the Hearing set for November 10, 2022. Additionally, staff will secure November 18, 2022, for the second day of Mediation and issue a Notice of Mediation to reflect that date.

I have also asked the Parties to keep the TLAB updated as to the ongoing discussions and to advise the Tribunal if a resolution is achieved prior to return-to Mediation Day 2 date of November 18th.

2022-10-29

X 

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