



Toronto Local Appeal Body

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Date: 2024-03-26
File Number(s): 20 230446 S53 02 TLAB,
20 230447 S45 02 TLAB,
20 230450 S45 02 TLAB
Citation: Toronto (City) v. Krzywucka, 2024 ONTLAB 204

INTERIM DECISION AND ORDER

Issuance Date: March 26, 2024

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), 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): DENNIS WOOD
Property Address: 84 NORTH DR
COA File No.: 20 158548 WET 02 CO (B0024/20EYK),
20 158552 WET 02 MV(A0243/20EYK),
20 158553 WET 02 MV (A0242/20EYK)

TLAB Case File No.: 20 230446 S53 02 TLAB,
20 230447 S45 02 TLAB,
20 230450 S45 02 TLAB

Hearing Date(s): June 17, 2021, September 13, 2021, September 14, 2021, December 2, 2021, December 16, 2021, April 29, 2022, July 22, 2022, September 27, 2022

Decision Delivered By: TLAB Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS:

<i>People Type</i>	<i>First Initial. Last Name</i>	<i>Representative</i>
<i>Applicant</i>	D. WOOD	
<i>Appellant (CITY)</i>	CITY OF TORONTO	D. ELMADANY M. MAHONEY
<i>Party (TLAB)</i>	PIOTR KRZYWUCKI	D. WOOD E. BASHURA (WOOD BULL LLP)
<i>Participant</i>	G. CANCELLI	
<i>Participant</i>	M. J. ORR	
<i>Participant</i>	A. ZRADO	

Participant
Participant

G. COOK-BENNETT
M. SMITH

M. S. SMITH

INTRODUCTION AND CONTEXT

- [1] Piotr and Halinka Krzywucka (Appellants), as owners of the property municipally known as 84 North Drive (subject property), brought applications to the Committee of Adjustment (COA) for the purpose of seeking consent to sever the subject property into two (2) residential lots, with associated Zoning By-law variance relief in order to construct a new detached dwelling with an attached garage on each of the newly created lots.
- [2] The COA heard the applications on December 3, 2020, and issued decisions approving the consent (File # B0024/20EYK) and the sixteen (16) associated variances (File #s A0242/20EYK & A0243/20EYK), subject to a number of conditions.
- [3] The Appellants then filed an appeal (Appeal) to the Toronto Local Appeal Body (TLAB) on December 18, 2020. The TLAB issued a Notice of Hearing and assigned the Appeal to (former) Panel Member S. Gopikrishna (Member Gopikrishna) to hear the matter.
- [4] A total of fifty-eight (58) persons are identified on the **TLAB's 'List of Appellants, Parties, Participants and Legal Representatives'**, including the owner of the subject property, the City of Toronto (Appellant), fifty-three (53) persons who elected Participant status, and three (3) expert witnesses.
- [5] The Proceeding in this Appeal consumed some eight (8) Hearing days, with Hearing Day #1 on June 17, 2021, and Hearing Day #8 completed on September 27, 2022.
- [6] Member Gopikrishna has issued five (5) Interim Decisions and Orders to date, all of which generally addressed procedural issues such as the submission of documents and submission requirements, and direction regarding the confirmation of the next hearing dates.
- [7] The last Interim Decision and Order on the record issued by the former Member and uploaded to the TLAB's Application Information Centre (AIC) website was dated April 20, 2022.
- [8] In the intervening period following the last Hearing Day, some 546 days have passed without the former Member issuing a final decision and order thereby completing the disposition of the Proceeding.
- [9] On May 17, 2023, Member Gopikrishna tendered his resignation to the City Council, effective immediately, ending his appointment as a TLAB Panel Member prior to the scheduled end of his appointment term in December 2023.

- [10] In such circumstances, the TLAB's *Rules of Practice and Procedure (Rules)* provide guidance as to the continued responsibilities of a Member either with the expiry of a Member's term or on a resignation before the end of that term.
- [11] For example, Rule 2.15 of the TLAB's **Rules**, under the heading '**Expiry of Member's Term during Hearing**', directs the following:
- 2.15 If the term of a Member presiding over a Hearing ends or expires before a decision or determination in a Proceeding is given, the term of the Member shall be deemed to continue, but only for the purpose of participating in the Proceeding to its conclusion and issuing a decision therein in accordance with the Rules and for no other purpose.*
- [12] Rule 2.17 addresses Members who resign before a determination is made in an appeal, and directs the following:
- 2.17 If a Member presiding over a hearing resigns from the TLAB before a decision or determination in that Proceeding is given, the Chair may appoint another Member to complete the Proceeding, and issue a decision.*
- [13] In accordance with the City of Toronto's (City's) *Public Appointments Policy* and description, members of the public who are appointed to the TLAB are responsible for presiding over hearings and rendering a written decision based on the evidence presented.
- [14] Furthermore, such appointed Members are also governed by the *Statutory Powers and Procedure Act (SPPA)*, which requires a Member to continue his/her term beyond a resignation date to complete hearings for any matter on which that Member was seized.
- [15] As with all TLAB Members, Member Gopikrishna was aware of his continued responsibility in this regard and acknowledged such when tendering his resignation to the City.
- [16] At the time of his resignation, he had three (3) Appeal Hearing files over which he had presided, and which were awaiting a final decision and order.
- [17] These files included 84 North Drive (*TLAB Case File No. 20 230446 S53 02 TLAB, 20 230447 S45 02 TLAB, and 20 230450 S 45 02 TLAB*), the subject of this Interim Decision and Order, and for which the last Hearing Day was September 27, 2022.
- [18] On March 14, 2024, Member Gopikrishna informed the TLAB that he had suffered a major health issue over the Christmas Holidays that had resulted in a significant, long-term health concern which prevented his ability to conclude and discharge his remaining Tribunal responsibilities.
- [19] Given this unfortunate health situation and the significant limitations on his ability to discharge his duties and produce decisions, he asked the TLAB to assign his outstanding Proceedings to different Panel Members.

THE LEGISLATIVE POLICY AND FRAMEWORK – THE TLAB’S RULES OF PRACTICE AND PROCEDURE

- [20] Rule 2.2 – These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merit.
- [21] Rule 2.3 - The TLAB may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.
- [22] Rule 2.12 – The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.
- [23] Rule 2.17 – If a Member presiding over a hearing resigns from the TLAB before a decision or determination in that Proceeding is given, the Chair may appoint another Member to complete the Proceeding and issue a decision.

ISSUES AND ANALYSIS

- [24] The circumstances regarding Member Gopikrishna’s situation are unprecedented at the TLAB.
- [25] There continue to be Appeal matters for which he is responsible and for which final decisions continue to be outstanding, including **84 North Drive**.
- [26] Unfortunately, Member Gopikrishna, who was the Member seized on the Appeal and conducted hearings, is no longer in a position to complete the Proceeding in respect of this file.
- [27] Rule 2.17 of the TLAB’s *Rules* permits the Chair to appoint another Member to complete the Proceeding and issue a final decision. **84 North Drive** is one of the Appeal files that falls within the ambit of this Rule.
- [28] Therefore, given the situation and in order to acknowledge and preserve the significant time and resources already expended in this Proceeding by the Parties and Participants, as well as the TLAB, the Chair finds that the most appropriate and reasonable resolution is to assign a different Member to complete the matter and issue a final decision and order.
- [29] In doing so, the newly assigned Member will be directed to dispose of the matter appropriately, promptly issue a final decision and order, and will be given all the latitude permitted within the TLAB’s *Rules* to complete this assignment.

CONCLUSION

[30] In the circumstances, therefore, the Chair will appoint another Member to complete the Proceeding regarding **84 North Drive**, who will be expected to conclude the Proceeding and issue a final decision and order in a timely manner.

DECISION AND ORDER

[31] The Chair **ORDERS** that another Member be appointed to complete the Proceeding for **84 North Drive** and issue a final Decision and Order as permitted by Rule 2.17 of the TLAB's *Rules of Practice and Procedure*.

[32] The Member will make every effort to issue a final Decision and Order by no later than **April 30, 2024**.

D. Lombardi
TLAB Chair, Panel Member