

## DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 18, 2017

PROCEEDING COMMENCED UNDER subsections 53(19) and 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): RODION TARLO

Applicant: ALEX BOROS DESIGN INC.

Counsel or Agent: JOHN ALATI

Property Address/Description: 40-42 TERRACE AVE

Committee of Adjustment Case File Number: 16 239466 NNY 23 CO, 16 239472 NNY MV, 16 239481 NNY MV, 16 239453 NNY 23 CO, 16 239488 NNY 23 MV

TLAB Case File Number: 17 196248 S53 23 TLAB, 17 196251 S45 23 TLAB, 17 196254 S45 23 TLAB, 17 196247 S53 23 TLAB, 17 196256 S45 23 TLAB

**Hearing date:**      Friday, December 08, 2017

**DECISION DELIVERED BY S. GOPIKRISHNA**

### INTRODUCTION AND BACKGROUND

1. Rodion Tarlo and Liudimila Sidorova (the "Appellants") are the owners of 40-42 Terrace Avenue. They applied to the Committee of Adjustment to sever the existing two lots and create 4 lots through a process of mutual conveyances of land from one plot to the other before developing detached houses on each of the 4 plots. The resulting plots (numbered 40, 40A, 42 and 42A) would have had frontages of 10.97 metres each and gross floor areas of approximately 416-419 square metres each.

2. The Committee of Adjustment (the "COA") heard the applications on 6 July 2017 and refused the variances and the requests to sever the property at both 40 and 42 Terrace Avenue (the "Variance Decision").

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3. The applicants filed a Notice of Appeal of the Variance Decision on 40 and 42 Terrace Avenue to the Toronto Local Appeal Body (“TLAB”). They retained Davies Howe LLP as their counsel.

4. On September 6, 2017, Mathew Schuman, Solicitor for the City of Toronto completed and submitted Form 4 indicating the City of Toronto’s request for Party Status for the proposals at 40 and 42 Terrace Avenue.

5. In response to the Notice of Appeal, TLAB issued a “Notice of Hearing” dated August 18, 2017 with a hearing date of 8 December 2017 which stipulated dates for submission per the TLAB’s rules. According to Rule 16.6 of the Rules, Expert Witness statements were to be exchanged no later than October 2, 2017.

6. On 29 September 2017, Brittany Willis of Davies Howes LLP requested the TLAB by way of Affidavit to request time until October 20, 2017 to submit a revised Expert Witness Statement. This affidavit was accompanied by an email from Matt Schuman of the City of Toronto indicating that the City had consented to a Witness Statement Exchange of October 20, 2017.

7. On 12 October, Gabe Szobel of the City of Toronto confirmed that his email could be taken as proof that the City of Toronto had consented to the postponing the Witness Statement Exchange day to October 20, 2017 in order to arrive at a settlement between the two parties.

## **MATTERS IN ISSUE**

8. The Motion is for an Order of the TLAB, pursuant to Rule 2.10, 4.4 and 4.5 of the TLAB Rules granting relief from Rule 16.6 of the Rules.

9. The Motion is also for “Such further and other relief as counsel may advise and TLAB may permit”. The specific relief requested is for time until October 20, 2017 to submit a Revised Witness Statement. The reason for the request is to permit the two parties to engage in discussions and arrive at a mutually agreeable settlement.

## **JURISDICTION**

10. Rule 2.10 of the Rules states:

### **Relief and Exceptions to the Rules**

***2.10 The Local Appeal Body 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.***

Rule 4.4 of the Rules states:

## Extension or Reduction of Time

Rules 4.4 and 4.5 of the Rules state:

**4.4 *The Local Appeal Body may on its own initiative, or, on a Motion by a Party, extend or reduce a time limit provided by these Rules on such conditions as the Local Appeal Body considers appropriate.***

**4.5 *The Local Appeal Body may exercise its discretion under Rule 4.4 before or after the expiration of a time limit and with or without a Hearing.***

Rule 16.6 of the Rules states:

## Witness Statement of Expert

**16.6 *Parties shall serve an expert witness statement on all Parties and File same with the Local Appeal Body, using Form 14, not later than 45 Days after a Notice of Hearing is served.***

## ANALYSIS, FINDINGS, REASONS

11. While not mandatory, the TLAB encourages parties to settle some or all issues prior to the Hearing where possible.

12. The Affidavit signed by Brittany Willis and emails from Matt Schuman and Gabe Szebo of the City of Toronto indicates that the Appellants and the City have engaged in settlement discussions without prejudice and have reached a settlement in principle. Requesting extra time to finalize the statement to incorporate the settlement is consistent with, and permissible under Section 4.4 of the Rules

13. The stated purpose of the request for extra time is to incorporate a revised proposal and the settlement with the City into the Witness Statement to be filed. I concur with the Appellant's submission that such settlements will save both parties and the TLAB time and effort to reach a final decision. The relief sought is therefore found to be in the public interest and therefore warrants exception under Section 2.10 of the Rules.

14. On the strength of the Affidavit served and filed by Brittany Wells requesting time until 20 October for filing Witness Statements, agreement from the City of Toronto and for the reasons discussed in Paragraphs 11-13 above, it would be appropriate to grant time until 20 October 2017 for Witness Statements to be submitted. No prejudice nor hardship has been asserted

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15. The appellants and parties are granted time until 20 October to submit or exchange Witness Statements. The provision of this extension to file Witness

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Statements does not change, nor impact the hearing date scheduled for 8 December 2017.

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', is written over a light gray rectangular background.

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S. Gopikrishna  
Chair, Toronto Local Appeal Body