

DECISION AND ORDER

Decision Issue Date Tuesday, November 21, 2017

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

Appellant(s): NHAT HUNG PHAN

Applicant: MAX MERCHASIN

Property Address/Description: 665 SHAW ST

Committee of Adjustment Case File Number: 17 159362 STE 19 MV

TLAB Case File Number: 17 249169 S45 19 TLAB

Date of Proposed Dismissal: Monday, October 30, 2017

DECISION DELIVERED BY S. Gopikrishna

INTRODUCTION AND BACKGROUND

1. Nat Hung Phan (Phan) is the owner or the Agent of the house at 665 Shaw Street, Toronto.

2. Phan applied to the Committee of Adjustment for relief by way of minor variances. This application numbered A0564/I 7TEY was heard on 27 September, 2017 by the Committee of Adjustment (COA) and the variances were refused.

3. Phan applied to the TLAB to appeal the decision of the Committee of Adjustment. The Notice of Appeal was completed by Phan's representative Maxim Merchasin of Acadia Design Consultants on 17 October 2017.

4. The Notice of Appeal Form 1 (the "Appeal Form") was submitted to the TLAB for processing. When the appeal was screened by the TLAB staff before being processed further, it was noted that the Appeal Form was incomplete in the following respects

Part 3- Required field are not complete- Appellant email address was missing.

Part 6- Appeal specific information- the nature of the appeal and the reasons and grounds for the appeal were not completed.

5. A Notice of Non-Compliance was issued by Ms. Hsing Yi Chao, Secretary, TLAB on 24 October, 2017 to the Appellant Phan giving them and their representatives five days to update their application form and complete the missing information for continued processing, in compliance with Rule 8.3 of the TLAB's Rules of Practice and Procedure.

6. No response was received by 30 October 2017. On being so notified by the TLAB Staff, I issued and signed a Notice of Proposed Dismissal on 30 October, 2017, listing the non-compliance issues listed in Paragraph 4 of this Decision.

7. A revised and updated Notice of Appeal was submitted by the Representative for the Appellant Phan on 8 November 2017. The Appeal Form was screened by the staff to ensure that it was complete and could be processed.

8. I have been advised by TLAB staff that the Notice of Appeal addresses the issues in the earlier application and that the form can now be processed pending my decision.

MATTERS IN ISSUE

9. The only matter that has to dealt with is to make a decision on whether the Appeal at 665 Shaw Street can be sent forward for scheduling based on the completeness of the updated application.

JURISDICTION

10. The following sections of the Rules are pertinent to my Decision on processing the Appeal:

Administrative Screening

8.1 The Local Appeal Body may not process an Appeal if:

- a) Form 1 is incomplete
- b) Firm 1 was submitted without the required fee for commencing a Proceeding
- c) Form 1 was submitted after the prescribed time for commencing a Proceeding
- d) there is some other technical defect in the submitted Form 1

8.2 The Local Appeal Body shall give a Person who has submitted a Form 1 a Notice of Non-compliance under Rule 8.1, using Form 15, which includes:

- a) the reasons the Local Appeal Body will not process the submitted Form 1; and

b) the requirements for resuming processing of Form 1, if applicable.

8.3 Except in the case of Rule 8.1(c), where requirements for resuming processing of Form 1 apply processing shall be resumed if the Person complies, within 5 Days from the date of notice, with the requirements set out in the notice given under Rule 8.2.

8.4 After the expiry of the time period provided in Rule 8.3, the Local Appeal Body shall refer the matter for adjudicative screening under Rule 9, without refunding any fee paid.

9.3 Where the Local Appeal Body proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the Local Appeal Body may direct.

9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of receiving the Local Appeal Body's notice given under Rule 9.3.

9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.

EVIDENCE

11. The Representative completed, updated and submitted the Appeal Form to TLAB on November 8 2017. This falls within the 10 day period of receiving the Notice of Dismissal.

12. TLAB Staff have forwarded the updated Appeal Form to me after a preliminary screening with the recommendation that the Appeal Form is now complete and could be processed for scheduling. I have reviewed the updated Appeal Form and find that the Appellant's email address has been entered in Section 3 of the Form. Likewise, Part 6 is now complete because the reasons for refusal by the Committee of Adjustment are now listed, albeit as are the reasons for appealing the decision to TLAB. Greater disclosure will be required should the matter advance, as required by the Rules.

ANALYSIS, FINDINGS, REASONS

14. The updated Appeal Form is deemed to be complete and fulfills the requirements of Rule 8 Since the time period for completing and re-submitting the form satisfies Rule 9.4, it is possible for the Presiding Member to either dismiss or make an alternative order under Rule 9.5.

15. The TLAB staff may now be in a position to issue a Notice of Hearing to for 665 Shaw Street with a schedule of pertinent dates for Parties and Participants to identify

themselves and make submissions as appropriate. The TLAB may also identify dates for hearing the Application.

DECISION AND ORDER

16. The earlier Decision for a Notice of Dismissal the Appeal on Administrative Grounds ,dated 30 October, 2017, is set aside. The TLAB Staff may issue a Notice of Hearing on the basis of the updated and completed Notice of Appeal.

17. It is anticipated that a fulsome compliance with the Rules will be observed.

X



S. Gopikrishna
Chair, Toronto Local Appeal Body