

## DECISION AND ORDER

**Decision Issue Date**      Thursday, November 30, 2017

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

Appellant(s): SEYED ARYA

Applicant: ARASH FARNIA

Property Address/Description: 14 Berkinshaw Crescent

Committee of Adjustment Case File Number: 17 190738 NNY 25 MV

TLAB Case File Number: 17 242676 S45 25 TLAB

**Screening date:**      Tuesday, October 17, 2017

**DECISION DELIVERED BY S. Gopikrishna**

### INTRODUCTION AND BACKGROUND

1. David Othen is the owner of 14 Berkinshaw Crescent, located in Ward 25 of the City of Toronto. He applied for variances to the Committee of Adjustment (COA) to build a new two storey building with an attached garage after demolishing the existing dwelling.
2. On 14 September 2017, the COA heard the Variance Application at 14 Berkinshaw. Based on the language in the COA's decision, I conclude that the application was modified at the time of the presentation to the COA; all the variances requested by the Applicant were approved by the COA with conditions.
3. On 3 October, 2017, Seyed Arya, resident at 9 Cobblestone Drive, Markham appealed to the Toronto Local Appeal Body (TLAB) for relief. He completed Form 1 to file the Appeal and submitted it to TLAB.

4. When TLAB Staff screened Form 1 as submitted by Mr. Arya, they found that Form 1 hadn't been completed and therefore couldn't be processed as submitted. On October 2017, the Staff emailed Mr. Arya with a notice of Non-Compliance stating that Appeal Form couldn't be processed further till it was completed and resubmitted within a five day period.
5. No reply was received in the requisite 5 day period. When informed by the Staff about the lack of response, I signed and issued a Notice of Proposed Dismissal on October 24, 2017. The Notice of Proposed Dismissal provides the addressee 10 days to respond to the Notice in writing and state why their Appeal shouldn't be dismissed.
6. No reply was received from Mr. Arya after the Notice of Proposed Dismissal was served within the ten day period. The lack of response from the Appellant makes it necessary for the TLAB to consider dismissing the Appeal under its Administrative Powers.

## **MATTERS IN ISSUE**

7. The only issue is whether the Appeal is to be dismissed because of lack of compliance on Administrative Grounds

## **JURISDICTION**

8. The recitation below states relevant and applicable TLAB's Rules of Practice and Procedure

### **Administrative Screening**

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

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

### **Notice of Administrative Screening**

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.

## **ADJUDICATIVE SCREENING**

### **Adjudicative Screening by Member**

9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the Local Appeal Body may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:

- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the Local Appeal Body could allow all or part of the Appeal;
- b) the Proceeding is frivolous, vexatious or commenced in bad faith;
- c) the Appeal is made only for the purpose of delay;
- d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
- e) the Appellant has not provided written reasons and grounds for the Appeal;
- f) the Appellant has not paid the required fee;
- g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;
- h) the Proceeding relates to matters which are outside the jurisdiction of the Local Appeal Body;
- i) some aspect of the statutory requirements for bringing the Appeal has not been met; or
- j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening

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.

## **ANALYSIS, FINDINGS, REASONS**

9. The initial screening by Staff and communication with the Appellant with the intention of providing the latter with an opportunity to complete Form 1 is consistent with, and satisfies the conditions listed in Sections 8.1- 8.4 of the Rules.

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10. The Notice of Dismissal signed by me on 31 October 2017 specifically informs the Appellant that their Appeal will be dismissed within 10 days unless written submissions are made to TLAB to address the question of why the Appeal shouldn't be dismissed without a Hearing. Since no response has been received in the requisite period, the conditions set forth for dismissal in Rules 9.1-9.3 above are satisfied.
11. Given the above findings, I find it reasonable to dismiss the Appeal without a Hearing. It is noted in passing that the Appellant is not eligible for a refund.
12. Dismissal of this Appeal results in the Decision of the COA being upheld.

**DECISION AND ORDER**

13. The Appeal to set aside the Decision of the COA at 14 Berkinshaw Crescent by Appellant Arya is herewith dismissed without a Hearing.
14. The Order of the Committee of Adjustment, dated 14 September 2017, respecting 14 Berkinshaw Crescent is upheld.

X 

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body