

## DECISION AND ORDER

**Decision Issue Date**      Tuesday, December 12, 2017

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

Appellant(s): KYO JEEN SONG

Applicant: MICHAEL MACPHEE

Property Address/Description: 89 BOULTBEE AVE

Committee of Adjustment Case File Number: 17 143276 STE 30 MV

TLAB Case File Number: 17 227882 S45 30 TLAB

**Hearing date:**            Wednesday, January 10, 2018

**DECISION DELIVERED BY S. Ruddock**

### INTRODUCTION

By Notice of Motion dated November 8, 2017, the Applicant sought an order for 1) a written hearing, and 2) that the TLAB Appeal be dismissed or "an early decision if a dismissal would not be considered".

### BACKGROUND

On September 5, 2017, the Appellant appealed to the Toronto Local Appeal Body (TLAB) from the Committee of Adjustment (COA) which had authorized the variances in these matters. The TLAB Notice of Hearing was issued on September 11, 2017 setting the date for the hearing of the appeal and for filing of the evidence. The hearing is set for January 10, 2018.

The Applicant filed a Notice of Motion on November 8, 2017, requesting 1) a written hearing, and 2) that the TLAB Appeal be dismissed or "an early decision if a dismissal would not be considered". The Applicant's reasons for the written hearing were as follows:

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(a) The case is on the low end of complexity (as explained in the ground for dismissal). An oral hearing would not be necessary to ensure fair opportunity to adequately convey all the information on the matters;

(b) Appearing for an oral hearing would be difficult to manage if it was not absolutely necessary since they (the homeowners) are representing themselves and would both need to request additional time off of work to attend.

The Applicant's grounds for a dismissal of the appeal (or an early decision if a dismissal would not be considered) are that the decision made by the COA can be demonstrated to be correct based on only a few basic arguments and compelling precedent. The Applicant submitted that this is a case of a small residential project that simply adds living space to a two-bedroom home to accommodate a growing family. The Applicant's Notice of Motion included their arguments on the merits of the Appeal with supporting documentation.

The Applicant further submitted that the Appellant's case is mainly based on concerns surrounding the impact of a construction project, and does not rely on legitimate planning issues that could be deemed to have been approved by the COA 'in error'. It was the Applicant's submission that the Appellant's arguments suggest that the true nature of their appeal surrounds protecting their new short term rental suite from a construction project next door.

The Applicant submitted that a key facet of the TLAB philosophy is "justice delayed is justice denied". They stated that they were expecting their first child due January 18, 2018, only 8 days after the scheduled hearing. It was the Applicant's submission that the Appellant's "ostensible objection to the correctness of the decision by the CoA has already caused a several month delay that will prevent us from bringing our child straight back to our renovated home" The Applicant stated that an early decision from TLAB "can limit the impact".

The Appellant submitted that there are legitimate planning issues, structural and mechanical engineering issues, land use issues and legal issues to be adjudicated upon at a full hearing. It was the Appellant's submission that the Applicant was attempting to "short circuit the appeal process and deprive the responding party of their statutory right of appeal". The Appellant stated that a full hearing on the merits is a statutory right and they should not be deprived of this right as result of "any alleged inconvenience" to the Applicant. It was the Appellant's submission that the Applicant was attempting to do indirectly that which it may not be able to do directly namely depriving them of their right to a hearing.

With respect to the philosophy "justice delayed is justice denied", the Appellant submitted that they had prepared and filed their Notice of Appeal in accordance with the Statutory Requirements and deny any delay in any manner. It was the Appellant's submission that the exercise of a statutory right of appeal does not constitute delay of justice, but a legal exercise of a lawful right.

The Appellant's response to the Motion included evidentiary disputes with the Applicant's submission on the merits of the Appeal as presented in the Applicant's Notice of Motion. One such dispute involved the distance between the houses, which the Appellant stated "is not as set out in the moving party's documentation but in fact the space is much tighter than alleged". After the initial response to the Notice of Motion, the Appellant filed a Supplementary Affidavit raising additional concerns with the subject property. It was the submission of the Appellant that this further supported their position that a full hearing on the merits is necessary.

## **MATTERS IN ISSUE**

The issue to be determined is whether to grant the motion request of the Applicant, for 1) a written hearing, and 2) that the TLAB Appeal be dismissed or "an early decision if a dismissal would not be considered".

## **JURISDICTION**

Rule 24.6 of TLAB's Rules of Procedure list the factors to consider for holding a Written Hearing. The section states that TLAB may consider any relevant factors in deciding to hold a Written Hearing, including:

- a) the convenience to the Parties and the Local Appeal Body;
- b) the likelihood of the process being less costly, faster and more efficient;
- c) whether it is a fair and accessible process for the Parties;
- d) the desirability or necessity of public participation in or public access to the Local Appeal Body's process;
- e) whether the evidence or legal issues are suitable for a Written Hearing;
- f) whether credibility may be an issue or the extent to which facts are in dispute;  
or
- g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

## **ANALYSIS, FINDINGS, REASONS**

TLAB has carefully considered the submissions of the parties. TLAB does not find that this is a case where the motion should be granted. With respect to the request for a Written Hearing, TLAB is not satisfied that a Written Hearing should be ordered in this instance. While a Written Hearing would be convenient and arguably fair for the Applicant, the Appellant objects to the request and has raised concerns that relate to

the fairness and convenience as it impacts on them. In addition, TLAB is not satisfied the evidence in this case is suitable for a Written Hearing.

With respect to the request to dismiss the TLAB appeal or issue an early decision, in this case TLAB is not able to do either without a hearing on the merits of the Appeal. In regards to the concern raised about delayed justice, the TLAB appeal has been scheduled in the normal course and pursuant to the statutory rules, procedures and timelines. TLAB agrees with the submission of the Appellant, that the exercise of a statutory right of appeal does not constitute a delay of justice

## **DECISION AND ORDER**

The Motion is denied. For the reasons expressed:

- 1) The motion is dismissed.
- 2) The Hearing scheduled for January 10, 2018 will proceed as scheduled.

**X**



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S. Ruddock  
Panel Chair, Toronto Local Appeal Body  
Signed by: Sophia Ruddock