

# DECISION AND ORDER

**Decision Issue Date**      Friday, December 08, 2017

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

Appellant(s): SILKE RUDELBACH

Applicant: SILKE RUDELBACH

Property Address/Description: 76 ASQUITH AVE

Committee of Adjustment Case File Number: 17 108897 STE 27 MV

TLAB Case File Number: 17 181904 S45 27 TLAB

**Hearing date:**      Thursday, December 07, 2017

**DECISION DELIVERED BY T. Yao**

## INTRODUCTION

This is a motion to dismiss Silke Rudelbach's appeal of the refusal by the Committee of Adjustment to grant seven minor variances.

## BACKGROUND

The chronology of events is as follows:

- |               |  |
|---------------|--|
| May 30, 2017  | The Committee of Adjustment dismissed Ms. Rudelbach's application  |
| June 12, 2017 | Mr. Reuter, Ms. Rudelbach's architect, wrote a letter to support Ms. Rudelbach's appeal.                   |
| June 16, 2017 | Ms. Rudelbach appealed   |
| July 7, 2017  | TLAB issued a Notice of Hearing for Oct 6, 2017. Included in this Notice are the following four deadlines. |

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- July 24, 2017      Deadline for Applicant Disclosure. No Applicant Disclosure was filed.
- July 27, 2017      Deadline for Notice of Intention to be a Party. Three persons, Messrs. Johnson, Keeley and Tillman, filed Party notices.
- July 27, 2017      Deadline for Notice of Intention to be a Participant. 8 persons filed Notices of Intention to be a Participant, including Mr. Reuter.
- August 8, 2017      Deadline for Document Disclosure.

No one filed formal document disclosure. However, the zoning by-law and official plan are posted on the TLAB file for persons to use without specific document disclosure. The Witness Statement of Sean Keely states, "I will refer to a number of photos previously submitted to the Committee of Adjustment . . . The Witness Statement of Richard Tillman states "I will be referring to several of the pictures submitted at the Committee of Adjustment hearing ....as well as photos submitted in other participants' statements."

- August 21, 2017      Deadline for Witness Statement (required by Parties, including Ms. Rudelbach). Messrs. Keely and Tillman filed Witness Statements.
- October 6, 2017      Ms. Rudelbach successfully brought a motion to adjourn the hearing before TLAB Member, Mr. Gopikrishna. He adjourned the hearing sine die. Mr. Gopikrishna went on to give Ms. Rudelbach two weeks to indicate a suitable hearing date and asked for other documentation.
- October 30, 2017      Mr. Tillman, one of the parties opposed to Ms. Rudelbach, brought a motion to dismiss Ms. Rudelbach's appeal because she had not supplied to the TLAB any dates as directed by Mr. Gopikrishna.
- Nov. 24, 2017      Ms. Rudelbach filed an affidavit in response to Mr. Tillman's motion, stating she would like to continue her appeal and was taking "appropriate steps".
- Dec 7, 2017      Mr. Tillman's motion is before me.

## **MATTERS IN ISSUE**

Whether the motion for dismissal should succeed. If not, how should the TLAB set a new date and on what terms?

## **ANALYSIS, FINDINGS, REASONS**

The Rules state:

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2.1 The Local Appeal Body is committed to fixed and definite Hearing dates. These Rules shall be interpreted in a manner which facilitates that objective.

2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding *on its merits*. (my italics)

I find that Ms. Rudelbach's failure to indicate possible dates can be explained by personal information given orally at the hearing on December 7, 2017 and which does not need to be repeated here.

At the motion hearing, Ms. Rudelbach indicated that Ms. Stewart was retained as her lawyer, as of November 24, 2017, although no change of representation has been filed as required by Rule 14.1. Ms. Stewart should file this document as soon as possible.

With this retainer, it now is possible to set a hearing date and I believe this would be just and expeditious. Mr. Reuter indicated that his letter of June 12, 2017, sets out his position on all the issues; so, this will stand as his witness statement under Rule 16.6. Since he is giving opinion evidence, he should file an Expert's Acknowledgement in Form 6, also as soon as possible. It appears he intends to speak about issues such as turning radii, other oversized decks etc., so, all *new supporting* material such as photographs, calculations etc. should be furnished to all the opposite parties and participants as soon as they are available, and to the TLAB, to be posted on the TLAB website. A similar obligation falls on opposing parties and participants, if they are to rely on any document not previously filed here or at the Committee of Adjustment, exclusive of the zoning by-law etc.

I should advise parties that in the spirit of Rule 2.2, I have assigned the hearing to myself. It is my intention that in so doing, there will be no further issues of disclosure or non-disclosure and we can all get down to the issues under s. 45(1) of the *Planning Act*, namely whether Ms. Rudelbach can demonstrate that the variances she seeks are minor, desirable for the appropriate development of the land and the general intent and purpose of the official plan and zoning by-laws are maintained. Further, she should ensure that the obligations created by relevant provincial policy are properly addressed.

## **DECISION AND ORDER**

I dismiss the motion and set the following for the hearing of this appeal:

Time: 9:00 a.m., Friday, January 12, 2018

Place: Hearing Room 1, 40 Orchard View Blvd, Suite 211, Toronto, ON M4R 1B9.

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*Ted Yao*

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T. Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao