

DECISION AND ORDER

Decision Issue Date Thursday, December 14, 2017

PROCEEDING COMMENCED UNDER subsection 45(12) section 53 of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): JAVAD SHIRVANI-GHOMI

Applicant: SEYED AMIR NAGHAVI

Property Address/Description: 210 HORSHAM AVE

Committee of Adjustment Case File Number: 16 253439 NNY 23 CO, 16 253442 NNY 23 MV, 16 253443 NNY 23 MV

TLAB Case File Number: **17 206112 S53 23 TLAB, 17 206113 S45 23 TLAB, 17 206114 S45 23**

TLAB

Hearing date: Thursday, December 07, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

These matters are on appeal from the Etobicoke and North York Panel of the Committee of Adjustment ('COA') of the City of Toronto ('City') refusing consent and variances to sever the property at 210 Horsham Avenue (the 'subject property') into two residential lots.

In advance of the Hearing, the City brought a Motion for an Adjournment of the Hearing scheduled to take place on December 7, 2017.

BACKGROUND

A short history to the Motion is warranted:

On or about November 21, 2017 the planner for the City was served with a Summons to Witness that I had issued in another proceeding, absent any knowledge of connection with the subject property.

On November 28, 2017, counsel for the City filed a Form 7, Notice of Motion with supporting affidavit noting the conflict in City planners' ability to attend this sitting (at a different location) due the responsibilities extant in the Summons.

On December 6, 2017, counsel for the Applicant/Appellant, by e-mail, consented to the adjournment request. There are no other parties; however, there are a multitude of participants who have expressed their intentions to participate and who have filed Participants Statements in accordance with the Rules.

The posting of the Motion on November 28, 2017 led to a number of inquiries as to the intended status of proceeding with the matter in the absence of the availability of the City Planner.

MATTERS IN ISSUE

Whether a consent adjournment should be granted as a result of a Notice of Motion for an adjournment occurring well within the 'Quiet Zone', the period established in the Rules for no proceedings and for sober consideration of settlement issues, possible mediation and final case preparation.

JURISDICTION

The Rules of the TLAB, Rule 2.1 provide that the TLAB is committed to 'fixed and definite Hearing dates'. As well, Rule 2.2 provides that the Rules 'shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.'

EVIDENCE

The affidavit of Concetta Drevininkas sets out the factual basis of the conflict in scheduling and the prejudice to the City that the unavailability of the witness would cause to the ability of the City to call its case opposing the appeal.

That witness had disclosed the position to be taken and the Hearing was to advance with that input, subject to proof.

There was no counter affidavit; indeed, the Appellant's counsel, Ms. Stewart, has consented to the adjournment. In her remarks, given the number of registered participants on the file, she requested that two days be set aside for the hearing of the related consent and variance matters.

In a similar vein, one participant, Anne McConnell, representing the Edithvale-Yonge Community Association, spoke only for the purpose of requesting inclusion in any rescheduling and further Notice, should the matter be adjourned.

The Appellants Planner was present and presumably prepared to proceed.

ANALYSIS, FINDINGS, REASONS

It is noteworthy that Motions within the Quiet Zone are not encouraged. Some circumstances will arise that requires a diversion from the strict application of the Rules. In this instance, it was the TLAB's own issuance of a Summons that caused the request for an adjournment.

The Summons' was issued November 16, 2017 and it was not until December 6, 2017, that the parties had finally communicated their position on the conflict. The TLAB Practice Direction 4 provides that adjournment requests are to be decided by Written Hearing as a courtesy to the public and to those involved more directly. Regrettably, both in respect of the response time and the imminent Hearing Date, this Practice Direction was ineffective in preventing inconvenience across the board requiring attendances by the parties, several members of the public and the TLAB Staff, in a remote Hearing location necessitated by the numbers indicating involvement.

All counsel are encouraged to respond on a timely manner to matters within their control; should this matter have been addressed more promptly, including telephone exchanges between counsel, an attendance might have been avoided and a more efficient process ensued.

As it turned out, both matters involving the City's planning witness engaged adjournment with the prospect of neither scheduled matter advancing on their respective Hearing Dates.

The parties and Ms. McConnell were asked to canvass two consecutive dates provided by the TLAB Staff for Hearing commencement, failing which a date would be set. The parties and Ms. McConnell were also asked to do what they could to ensure

and effective and timely Hearing, including the possible marshalling of evidence from the parties and the participants to avoid duplication and repetition. It is often instructive to have issues of commonality addressed by a single spokesperson.

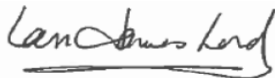
DECISION AND ORDER

The Hearing Date scheduled for December 7, 2017 is adjourned.

A rescheduled Hearing will be convened at 9:00 am on April 26 and April 27, 2018, should the second day become necessary.

The TLAB Staff are directed to forward a revised Notice of Hearing with address location; there are no changes to the required dates for production, exchanges, disclosure of evidence, witness, party or participant statements.

X



I. Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord