

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, January 17, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): DAVID VELIKONJA

Applicant: PETER HIGGINS ARCHITECT INC

Property Address/Description: 42 MCRAE DR

Committee of Adjustment Case File Number: 17 146064 NNY 26 MV (A0401/17NY)

TLAB Case File Number: 17 235290 S45 26 TLAB

**Hearing date:**      Thursday, February 22, 2018

**DECISION DELIVERED BY L. McPherson**

## INTRODUCTION AND BACKGROUND

On August 31, 2017 the Committee of Adjustment ("Committee") for the City of Toronto approved, subject to conditions, an application for minor variance for the property at 42 McCrae Drive. The proposal was to permit a two-storey addition to the rear of the existing dwelling, an easterly second storey addition overtop the existing garage, to enclose the existing covered front porch, and to construct a new covered porch and floor bay window at grade.

On September 19, 2017, Mr. David Velikonja, the owner of the adjacent property at 40 McCrae Drive, appealed the decision of the Committee to the Toronto Local Appeal Body ("TLAB"). Ms. Laura Chan, a co-owner of 40 McCrae Drive, also indicated her intention to be a Party. No other Parties have requested status at the hearing.

On January 5, 2018, Ms. Chan filed a Notice of Motion (Form 7) requesting the TLAB to give direction on the Witness Statement that she has submitted. Specifically, the Motion requested the TLAB to provide a decision on whether the submitted Witness

Statement is a required document, and, if so, provide guidance if it is decided that the submitted Witness Statement requires clarification and/or additional information.

The grounds for the Motion indicate that Ms. Chan submitted document disclosure according to the schedule provided in the TLAB Notice of Hearing. If was her reading of the TLAB Rules of Practice and Procedure Section 12.6 “Role of a Party” that it was not mandatory for her to submit a Witness Statement. She advised that she received confirmation (that a party must provide a Witness Statement for each person the party intends to call to give evidence), from the TLAB staff. She submitted a Witness Statement (Form 12) in accordance with the schedule provided.

Mr. Hoffman, the legal representative for the owner of 42 McRae Drive, initiated an email to TLAB on December 4, 2017 advising that the Form 12 submitted by Ms. Chan was deficient, and requested Ms. Chan, in accordance with TLAB’s Rules of Practice and Procedure, to provide a “short written outline” of her intended evidence in respect of each variance at issue.

Ms. Chan indicated that the Witness Statement submitted included a list of issues, and referred to the Notice of Appeal Form filed by Mr. Velikonja, which listed the variances with By-law information. Further, she submitted a summary that shows which variances were the subject of written comments to the Committee. It is her opinion that the submitted Witness Statement outlines the intended evidence.

## **MATTERS IN ISSUE**

There are two interrelated issues. The first is whether Ms. Chan is required to submit a Witness Statement. If the answer is yes, the second issue is whether the submitted Witness Statement of Ms. Chan satisfies the requirements under the TLAB’s Rules of Practice and Procedure.

## **JURISDICTION**

TLAB’s Rules of Practice and Procedure state the following relevant to the issues:

### **Section 12.6, of Role of a Party**

A Party to a Proceeding before the Local Appeal Body may participate fully in the Proceeding and this includes the following:

- a) bring, serve and File Motions;
- b) be a witness in the Proceeding;
- c) be questioned by the Parties;
- d) call witnesses in the Proceeding;

- e) receive copies of all Documents served or Filed in the Proceeding;
- f) cross-examine witnesses in the Proceeding;
- g) make submissions in the Proceeding, including final argument;
- h) participate in any Mediation; and
- i) claim costs and be subject to a cost award.

#### Section 16.4, Witness Statements

Parties shall serve witness statements on all other Parties and File same with the Local Appeal Board, using Form 12, not later than 45 Days after a Notice of Hearing is served. A witness statement shall include, where applicable:

- a) a short written outline of the Person's background, experience and interest in the Appeal;
- b) a list of the issues that they will discuss and a short written outline of that Person's intended evidence;
- c) the date;
- d) the full legal name and full mailing address of the witness; and
- e) the signature of the witness.

## **EVIDENCE**

Ms. Chan's Witness Statement (Form 12) is Attachment 1 to this decision. The Witness Statement indicated that she supports the information submitted in Part 6 of the Notice of Appeal Form filed by Mr. Velikonja (Attachment 2). She indicated that she intends to use documents submitted in the document disclosure index. Further, she stated that "except for the parking variances, a number of the remaining variances requested do not satisfy the "four tests" (individually and cumulatively) as set out in Section 45(1) of the Planning Act. The application does not represent good planning."

Part 6 of the Notice of Motion addresses two variances related to the permitted floor space index ("fsi") and one variance related to the minimum west side yard setback. Part 6 also indicates that there are submitted written comments by others that oppose the granting of variances related to the front yard setback and the east yard setback.

Mr. Hoffman stated in his response to the Motion (Attachment 3) that the Appellant must file a Witness Statement based on Rule 16.4 cited above. He referred to the Ms. Chan's Witness Statement which indicated that except for the parking related variances, that a "number of remaining variances requested do not satisfy the four tests". He noted that it is unclear from Form 12 if Ms. Chan intends to take issue with all of the non-parking variances or only certain ones and what her specific concerns are.

Mr. Hoffman stated that his client is entitled to know the list of issues and a short written outline of the intended evidence. He further stated that the submissions are not sufficient and so vague as to prejudice his client's ability to prepare for the hearing. He stated that the Form 12 as currently drafted subverts the intent of the TLAB's Rules of Practice and Procedure which are, in part, intended to avoid "trial by ambush". He submitted that it is unfair that Ms. Chan knows his client's reasons for supporting the application but they have not been provided with reasons for her opposition.

Mr. Hoffman requested that the TLAB direct the Appellant, Ms. Chan, to file a Witness Statement in accordance with TLAB's Rules of Practice and Procedure and, in particular, Rule 16.4, setting out the list of issues she intends to raise at the hearing and a short written outline of her intended evidence in respect of each issue. Further, he indicated that his client reserves its right to seek costs against Ms. Chan in accordance with TLAB's Rules of Practice and Procedure after a decision has been made on this matter.

## **ANALYSIS, FINDINGS, REASONS**

With respect to the issue of whether Ms. Chan is required to file a Witness Statement, Rule 12.6 of the TLAB's Rules of Practice and Procedure provides that a Party may be a witness in the proceeding. If Ms. Chan is intending to be a witness in the hearing and provide evidence to the TLAB, a Witness Statement is required.

I have reviewed the Witness Statement filed by Ms. Chan and the Notice of Appeal filed by Mr. Velikonja. In addition, I have reviewed the variances approved by the Committee and the letters submitted to the Committee. I find that of the 15 proposed variances, Mr. Velikonja's Notice of Appeal only addressed three of the variances directly; two for fsi, and one for the east yard set back. The Notice of Appeal indicated that others have addressed the variances related to front yard set back and west side yard setback but it does not provide any detail indicating whether he has a concern with these variances or agrees with the opinion in the letters, and whether he intends to call evidence on the other variances. In addition, while Ms. Chan indicated that she did not have issues with the parking related variances, the disclosed documents include by-law excerpts related to parking provisions.

I agree with Mr. Hoffman that Section 16.4 b) of the TLAB's Rules of Practice and Procedure require that the Witness identify a list of issues that they will discuss and a short written outline of the intended evidence. The submitted Form 12 does not satisfy this requirement by not identifying issues related to specific variances and not providing a short written outline of the intended evidence. The Applicant is entitled to understand the Appellant's case and the evidence that they will be bringing before the TLAB. The

Rules of Practice and Procedure are intended to enable the TLAB to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

It is to be noted that despite success at the Committee, an appeal engages the TLAB in a hearing *de novo*. That means that while the identification of specific issues by an Appellant is helpful, expected and required, such identification does not release the Applicant from the obligation to support each variance sought fully and in accordance with the tests and considerations specified by statute.

On the matter of the costs advisory, while costs are a consideration that may be invoked on request at the conclusion of a hearing, the threat of costs and the apprehension as to a costs award must play no part in the adjudicative process. In this case, to date, the parties have responsibly exercised their appreciation of the Rules.

## **DECISION AND ORDER**

The Notice of Motion filed by Ms. Chan requests direction related to the filing of a Witness Statement. The TLAB orders:

1. A Witness Statement is required if Ms. Chan or any other person of a Party who is intending to provide evidence to the TLAB; and
2. A revised Witness Statement is to be provided by Ms. Chan, which lists the issues related to the variances, the variances in contention and a short written outline of the intended evidence. The revised Witness Statement is required to be filed with the TLAB and the Applicant no later than Monday January 25, 2018.

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A handwritten signature in black ink, appearing to read 'L. McPherson', is written over a horizontal line.

L. McPherson  
Panel Chair, Toronto Local Appeal Body

# Witness Statement Form 12

## Attachment 1

**TLAB Case File Number**  
17 235290 S45 26 TLAB

The information collected on this form is considered to be a public record. The legal authority to make the information public is section 1.0.1. of the Planning Act. As stated at section 27 of the Municipal Freedom of Information and Protection of Privacy Act, privacy provisions of Part 2 of the Act would not apply to any information collected on the form. Questions about this form can be directed to the Manager, Planning & Liaison, Court Services, 137 Edward Street, 2<sup>nd</sup> Floor, Toronto, Ontario M5G 2P1 or by telephone at 416-338-7320.

### Part 1: Location Information

Address and/or Legal Description of property subject to appeal

Street Number 42	Street Name McRae Drive	Postal Code M4G 1R9
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### Part 2: Hearing Information

Hearing Date (yyyy-mm-dd) 2018-02-22	Hearing Time 9:00 AM	Hearing Location TLAB Hearing Room 1
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### Part 3: Witness Statement filed by

First Name Laura	Last Name Chan
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Corporation Name or Association Name (Association must be incorporated)

Position Title (if applicable)	Email laura.chan.1001@gmail.com
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Street Number 40	Street Name McRae Drive	Suite/Unit Number
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City/Town Toronto	Province Ontario	Postal Code M4G 1R9
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Telephone Number (416) 482-4202	Mobile Number
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If the request is filed by a representative, please identify the party below.

Party First Name	Party Last Name
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### Part 4: Witness Information

First Name Laura	Last Name Chan
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Position Title (if applicable)	Email laura.chan.1001@gmail.com
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Street Number 40	Street Name McRae Drive	Suite/Unit Number
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City/Town Toronto	Province Ontario	Postal Code M4G 1R9
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## Part 5: List of Witness's intended evidence and relevant issues under Appeal

Provide a statement in accordance with Rule 16.4, using numbered paragraphs. Include in your statement, the witness' background, experience and interest in the Appeal; a list of the issues and outline the intended evidence. The Applicant may have filed revisions to the original application. Where applicable, relate your evidence to any revisions identified in the Applicant's Disclosure; the Witness or Participant's Statements filed and any reports or documents disclosed under Rule 16.2 and previously filed.

- 1) I am one of the owners of 40 McRae Drive, the west side neighbour of 42 McRae Drive (the property subject to the appeal).
- 2) I support the information submitted in "Part 6" of the "Notice of Appeal Form".
- 3) During the hearing, I intend to use the documents I submitted as summarized in "Disclosure - Document Index".
- 4) In my opinion, except for the parking related variances, a number of the remaining variances requested do not satisfy the "four tests" (individually and cumulatively) as set out in Section 45(1) of the Planning Act. The application does not represent good planning.
- 5) I am asking for the decision of the Committee of Adjustment to be overturned. The 13 requested variances related to the front, the size, the west side yard and the east side yard should be reconsidered.

### Additional Notes:

- 6) The information in the "Committee had before it the following communication" section of the "Disclosure - COA August 31 2017 Minutes" does not reflect all the letters and correspondences sent to the Committee of Adjustment (COA) before the COA hearing.
- 7) I reserve the right to provide additional comments on any new material that may be filed before the Toronto Local Appeal Board (TLAB) hearing commences, including other Witness Statements, Submissions or Oral Evidence given at the hearing.

# Witness Statement Form 12

## Part 6: Witness Signature

Signature

Laura Chan

Digitally signed by Laura Chan  
Date: 2017.11.27 12:07:03 -05'00'

Date (yyyy-mm-dd)

2017-11-27

## Part 7: I confirm that I or the Representative below identified have served this Witness Statement and the attached documents on all the persons identified below

Person's Name (First Name, Last Name)

Email

Address (Street Number, Street Name, Suite/Unit Number, City/Town, Province, Postal Code – only where no Email)

TLAB

tlab@toronto.ca

JOE HOFFMAN

jhoffman@goodmans  
ca

jhoffman@goodmans.ca

DAVID VELIKONJA

dvelikon@gmail.com

## Part 8: Party or Representative Signature

Signature

Laura Chan

Digitally signed by Laura Chan  
Date: 2018.01.08 16:37:03 -05'00'

Date (yyyy-mm-dd)

2018-01-08

NOTE: A Witness Statement is required from every party intending to provide oral or written evidence on the matters in issue in this TLAB Case File.





## Attachment 2

# Notice of Appeal Form 1

**RECEIVED**
*By Committee of Adjustment TEY at 12:27 pm, Sep 19, 2017*

The information collected on this form is considered to be a public record. The legal authority to make the information public is section 1.0.1. of the Planning Act. As stated at Section 27 of the Municipal Freedom of Information and Privacy Act, the privacy provisions of Part 2 of the Act would not apply to any information collected on the form. Questions about this form can be directed to the Manager of Planning & Liaison, Court Services, 137 Edward Street, 2<sup>nd</sup> Floor, Toronto, Ontario M5G 2P1 or by telephone at 416-338-7320.

**Part 1: Appeal Type: A separate Notice of Appeal and additional appeal fee is required for each Subject of Appeal.**

Subject of Appeal (check only one)	Type of Appeal (check only the boxes related to your appeal)	Planning Act Reference
<input checked="" type="checkbox"/> <b>Planning Act Section 45 (12)</b>	<input checked="" type="checkbox"/> Appeal a decision on minor variance from the provisions of any bylaw passed under section 34 or 38.	45(1)
	<input type="checkbox"/> Appeal a decision on enlargement or extension of a building or structure that is legal non- conforming	45 (2) (a) (i)
	<input type="checkbox"/> Appeal a decision on enlargement or extension of a building or structure that is legal non-conforming for a purpose that is similar or more compatible to a permitted use	
	<input type="checkbox"/> Appeal the decision on a request to permit or refuse the use of land, building or structure that is legal non-conforming and that is similar to the purpose or more compatible to a permitted use	45 (2) (a) (ii)
	<input type="checkbox"/> Appeal the decision on a request to permit or refuse a use of land, building or structure that is generally defined for any purpose that conforms with the uses permitted in the bylaw	45(2)(b)
<input type="checkbox"/> <b>Planning Act Section 53</b>	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Appeal for failure to make a decision on the application within 90 days	53(14)

# Notice of Appeal Form 1

## Part 2: Location Information

Address and/or Legal Description of property subject to the appeal: PLAN 2121 PT LOT 483 PT 484		
Street Number 42	Street Name McRae Drive	Postal Code M4G 1R9

## Part 3: Appellant Information

First Name David		Last Name Velikonja	
Corporation Name or Association Name (Association must be incorporated)			
Position Title (if applicable)		Email dvelikon@gmail.com	
Street Number 40	Street Name McRae Drive		Suite/Unit Number
City/Town Toronto		Province Ontario	Postal Code M4G 1R9
Telephone Number (416) 482-4202		Mobile Number (416) 270-3313	
Appellant Signature <b>David Velikonja</b> Signature not required if appeal is submitted by a law firm.			Date (yyyy-mm-dd) 2017-09-19

**Please note: You must notify the Toronto Local Appeal Body for each appeal filed of any change of email, address or telephone number in writing via email to [tlab@toronto.ca](mailto:tlab@toronto.ca) and include your TLAB Case File Number(s) in the subject line of the email after the Case File Number(s) has been assigned.**

# Notice of Appeal Form 1

## Part 4: Representative Information (if applicable)

<b>I hereby authorize the named lawyer, law firm, corporation and/or individual(s) to represent me</b>			
First Name		Last Name	
Corporation Name or Association Name (Association must be incorporated)			
Position Title (if applicable)		Email	
Street Number	Street Name		Suite/Unit Number
City/Town		Province	Postal Code
Telephone Number		Mobile Number	
Appellant Signature		Date (yyyy-mm-dd)	
<p>Please note: If you are representing the appellant and are not a solicitor, please confirm that you have authority as required by the TLAB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box and signing below.</p> <p><input type="checkbox"/> I certify that I have authority to act as a representative with respect to this appeal on behalf of the appellant and I understand that I may be asked to produce this authorization at any time.</p>			
Representative Signature		Date (yyyy-mm-dd)	

## Part 5: Accessibility

<p>We are committed to providing services as set out in the Accessibility for Ontarians with Disabilities Act, 2005. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible at <a href="mailto:tribunalaccess@toronto.ca">tribunalaccess@toronto.ca</a>.</p>
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# Notice of Appeal Form 1

## Part 6: Appeal Specific Information

Provide specific information about what you are appealing using numbered paragraphs and include the Committee of Adjustment File Number(s).

Provide the nature of your appeal and the reasons and grounds for your appeal. Be specific and provide only land-use planning reasons. Include the specific provisions, sections and/or policies of the Official Plan or By-law(s) which are the subject of your appeal as applicable.

I would like to appeal the Committee of Adjustment (COA) decision for the application File Number A0401/17NY.

1) The COA approved the variances to Chapter 10.20.40.40.(1), By-law No. 569-2013 and Section 6.3.3, By-Law No. 1916. This allowed the increase of the maximum permitted floor space index (FSI) from 0.6 to 0.76.

I object to the granting of these variances because a structure with a 0.76 FSI is larger than any other that has been approved in the immediate area. Granting these variances will be used as an example for the building of other larger homes. This will set a negative precedent and will be exploited by others in the future which will then lead to a change in the character of the neighborhood.

Furthermore, the large extension into the backyard will provide less morning sunlight into my backyard garden, the second floor bedroom, the rear window of my living room and the rear window of my basement.

2) There are other requested variances for this application. While the COA did consider them, they considered them to be minor and granted the variances. I believe that a number of these variances are not minor on their own and definitely not as a whole. They must be reconsidered.

I oppose the granting of variance Chapter 10.20.40.70.(3), By-law No 569-2013. I feel boxed in by a 2-storey brick wall if the minimum west side setback of 1.2m is not respected and would impact the enjoyment of my backyard. The renovation calls for the existing 2-storey portion of the house to be extended from 6.42 meters to 10.57 meters into the backyard. This represents a significant increase of 64%.

There are submitted written comments that oppose the granting of variances Chapter 10.5.40.70.(1), By-law No 569-2013; Section 6.1.1, By-Law No. 1916; Section 5.7, By-law No. 1916. These are related to the front.

There are submitted written comments that oppose the granting of variances Chapter 10.20.40.70.(3), By-law No 569-2013; Section 6.1.1, By-law No. 1916; Section 5.7, By-law No. 1916. These are related to the east side.

For these reasons, I would like to appeal the COA's decision on this application.

# Notice of Appeal Form 1

For this property are there other appeals existing or to be filed with the City of Toronto?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
For this property are there other approvals applied for under the Planning Act or any other Act?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If you answered yes to any of the above, please provide Committee of Adjustment and City File Numbers and the TLAB Case File Number(s), if any.	
<p>NOTE: Only decisions of the Committee of Adjustment under s.45 (12) and s. 53 of the Planning Act are appealable to the Toronto Local Appeal Body.</p> <p>NOTE: If there are any related appeals filed with Ontario Municipal Board, you must complete an OMB prescribed Appellant Form within any applicable appeal limitation period.</p>	

## Part 7: Other Applicable Information

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## Part 8: Required Fee

Total Fee Submitted \$ 300.00
Date of Payment 2017-09-19