

DECISION AND ORDER

Decision Issue Date Monday, January 15, 2018

PROCEEDING COMMENCED UNDER subsection 53(19), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): MIZANUR CHOWDHURY, AMBER STEWART

Applicant: ERIKA STRANGIS

Property Address/Description: 94 PITT AVE

Committee of Adjustment Case File Number: 17 189161 ESC 35 CO, 17 189158 ESC 35 MV, 17 189160 ESC 35 MV

TLAB Case File Number: **17 239902 S53 35 TLAB**

17 239908 S45 35 TLAB

17 239906 S45 35 TLAB

Motion Hearing date: Monday, January 15, 2018

DECISION DELIVERED BY T. Yao

INTRODUCTION

Mr. Chowdhury seeks to sever 94 Pitt Ave and requires several variances as well as the consent for a severance. He has been given a hearing date for March 7, 2018, for which both his lawyer, Ms. Stewart and his planner, Mr. Romano, are already booked for an OMB hearing. Accordingly, on Dec. 29, 2017 Ms. Stewart brought this motion in writing to be heard January 15, 2018.

MATTERS IN ISSUE

The motion requests an adjournment of the hearing date, which under Practice Direction 2 is to be treated as a written motion and Ms. Stewart has supplied March 13, 2018 as an alternative date if she is successful. Ms. Stewart asks for one of three possible results:

- a. To convert the hearing into a written hearing using as evidence, Mr. Romano's pre-filed expert witness statement, as well as other pre-filed documents. This will allow her to keep the March 7 hearing date.
- b. To adjourn to March 13, 2013 and maintain the format of an in person oral hearing; or
- c. To convert the oral hearing of March 7, 2018 to a hearing by telephone conference on March 13, 2013 with reliance on the pre-filed materials.

ANALYSIS, FINDINGS, REASONS

Rule 23.3 states:

23.3 In deciding whether or not to grant a Motion for an adjournment the Local Appeal Body may, among other things, consider:

- a) the reasons for an adjournment;
- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the Local Appeal Body's process;
- d) the timeliness of an adjournment;
- e) the position of the other Parties on the request;
- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
- g) the effect an adjournment may have on Parties, Participants or other Persons; and
- h) the effect an adjournment may have on the ability of the Local Appeal Body to conduct a Proceeding in a just, timely and cost effective manner.

Subsections b), e), f) and g) are not applicable as there are no other parties or participants. As far as a), c), and h) are concerned, Ms. Stewart advised the TLAB of her unavailability by email some two weeks before the Notice of Hearing was sent out (October 2017); thus, there is no impact on the integrity of the TLAB process. For subsection d), timeliness, this motion is returnable Jan 15, 2018; a week before the deadline of Jan 22, 2018. This request is made in timely fashion and the criteria for granting an adjournment are met.

I have reviewed Mr. Romano's Witness Statement and it is indeed complete, even to setting out all conditions for the consent. Probably it could be dealt with by way of written hearing, but given the importance of this appeal to Ms. Stewart's client and given that helpful insights are often uncovered during oral testimony, I am reluctant to choose a written hearing, where the decision-maker could misunderstand an issue because they cannot question Mr. Romano. Accordingly, taking into consideration the Rules and the most cautious path, I choose option c) above, to convert the March 7, 2018 hearing to a telephone conference hearing, but at a time when Ms. Stewart and Mr. Romano are available.

I am seized of this matter and will be the TLAB member at the telephone conference.

DECISION AND ORDER

The March 7, 2018 hearing date is set aside. Instead of an in-person hearing, there will be a telephone teleconference hearing at 9:00 A.M., on Tuesday March 13, 2018. The TLAB will send out a fresh Notice of Hearing.

X

Ted Yao

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