

DECISION AND ORDER

Decision Issue Date Monday, January 29, 2018

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

Appellant(s): ALAN SPENCE

Applicant: KATARZYNA SENDROWICZ

Property Address/Description: 15 NELLES AVE

Committee of Adjustment Case File Number: 17 147628 WET 13 MV (A0377/17EYK)

TLAB Case File Number: **17 208355 S45 13 TLAB**

Hearing date: Monday, December 18, 2017

DECISION DELIVERED BY S. Ruddock

INTRODUCTION

The Applicant filed a Notice of Motion supported by affidavit, dated December 1, 2017, requesting the following relief:

1. That this motion be heard at the commencement of the hearing scheduled for Monday, December 18, 2017 at 9:00 a.m.;
2. Granting an exception to Rule 17.1 of the TLAB's Rules of Practice and Procedure (The "TLAB Rules") to permit the late filing of the Notice of Motion,
3. Granting an exception to Rule 16.6 of the TLAB's Rules to permit the Applicant to deliver a Form 14 and requisite Form 6 at the earliest date permitted,
4. Granting an adjournment of the subject hearing, currently scheduled for December 18, 2017, and
5. Rescheduling the hearing to a date all parties are available.

BACKGROUND

On July 31, 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 August 21, 2017 setting the date for the hearing of the appeal and for filing of the evidence. The hearing was set for December 18, 2017 with document disclosure due on September 20, 2017 and expert witness statements due on October 5, 2017.

On October 27, 2017, the Appellant submitted a reporting letter from an expert, Ms. Ute Ms. Maya-Giambattista (the "Expert Report"), which addressed privacy concerns relating to the construction of the third-storey rear terrace. The Appellant did not file a Form 14 or a Form 6, Acknowledgment of Expert's Duty with the Expert Report. The Applicant filed a Notice of Motion, in part, to have the late filing of the Expert Report excluded from the hearing.

On November 14, 2017, TLAB issued a Decision ordering, in part, that *"...the Appellant shall file a Form 14 no later than November 17, 2017 for the expert report already filed. This document may then be used at the hearing."* As a result of TLAB's November 14, 2017 Decision, the Appellant submitted a Form 14 on November 16, 2017 for the Expert Report already filed. On November 17, 2017, the Appellant submitted a revised Form 14. The Applicant states that the revised Form 14 added new opinion evidence.

The Appellant also submitted a Form 14 on behalf of Mr. David Riley, a colleague of Ms. Maya-Giambattista, which contains an identical expert witness statement as Ms. Maya-Giambattista's revised Form 14. The Applicant states that the revised Form 14 submitted on November 17, 2017 changed the substance of the Expert Report as filed on October 27, 2017. As such, the Applicant is now seeking to file a Form 14 in order to rely on expert planning opinion evidence at the hearing in response to the Appellant's revised Form 14 and in support of her application.

The Appellant filed a Notice of Response dated December 18, 2017, consenting to the motion. The parties agreed on May 10, 2018 as the date to re schedule the hearing should the Motion be granted.

MATTERS IN ISSUE

The issue is whether to grant an extension to the Applicant to deliver the Form 14 and adjourn the original hearing date scheduled for December 18, 2017. Given the timing of the motion, the request was heard on the December 18, 2017 hearing date by way of a written hearing.

JURISDICTION

TLAB Rules contemplate the ability to recognize and adjust for circumstances that require relief for a just and fair consideration of the appeals before it.

ANALYSIS, FINDINGS, REASONS

Given the consent of the parties, and their agreement to May 10, 2018 as the new hearing date, it is reasonable to grant the motion request in this case.

DECISION AND ORDER

The requested Motion relief is granted and consent is given to the adjournment of the matter above scheduled for hearing on December 18, 2017. A revised Notice of Hearing will issue with a new hearing date of May 10, 2018 together with a revised schedule for the filing of the Form 14 by the Applicant. The Form 14 and any related attachments all shall be filed no later than February 20, 2018 and may then be used at the hearing.

X 

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