

DECISION AND ORDER

Decision Issue Date Monday, February 26, 2018

PROCEEDING COMMENCED UNDER subsection 53, subsection 53(19), subsection 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): XHENI XHAFERI

Applicant: XHENI XHAFERI

Property Address/Description: 148 TIAGO AVE

Committee of Adjustment Case File Number: 17 203319 STE 31 CO, 17 203329 STE 31 MV, 17 203330 STE 31 MV

TLAB Case File Number: **17 269655 S53 31 TLAB, 17 269656 S45 31 TLAB, 17 269657 S45 31 TLAB**

Written Motion Hearing date: Thursday, February 22, 2018

DECISION DELIVERED BY G. Burton

Parties

Xheni Xhaferi

City of Toronto

Eva Pardalis

Counsel and Representatives

Adrienne DeBaker

Self-represented

Participants

Rita Pacitto

INTRODUCTION AND BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from the refusal of the Committee of Adjustment of an application for a consent and related variances for 148 Tiago Avenue. The proposal was to construct a new three-storey detached dwelling with a rear second-storey deck, exterior stairs, and an integral below grade garage on each lot.

A Notice of Hearing was issued by the TLAB for April 10, 2018. This Notice included dates required for the usual filing of documents as required by the Rules. All such dates are now past, and nothing has been filed by the applicant as required. The owner had tried to file a motion seeking a later hearing date, but was not able to complete the formal requirements. Thus she sought professional help. On February 5, 2018, a Motion was filed by the Planner acting on behalf of the applicant, returnable on February 22. The Motion was conducted in written form, as is permitted by TLAB's Practice Direction No. 2, set out here for information:

Practice Direction: Default Format of Specific Motion Hearings

Unless otherwise directed by TLAB, where a Party requests a date to file a Motion for a Written or Electronic Hearing (telephone or video conference) or the adjournment of a Hearing Date, or both, TLAB will treat and require the request to be conducted as a written Motion. The Party will be provided with a date for a Written Hearing motion for service. In the case of a Hearing Date adjournment request, the TLAB shall supply alternative hearing dates and the parties shall indicate their availability for those dates, in the event that the Motion is granted. The default form of Hearing for these two specific Motion requests will not be Oral, as specified in Rule 17.3. The timeline for Motion responses outlined in the Rules for Motions will apply.

EVIDENCE

Mr. Christian Chan, Authorized Representative of the owner on this appeal, filed a Notice of Motion (Form 7) for a written hearing seeking the following relief:

1. Adjournment of the hearing date, with revised dates for pre-filing of documents in the new Notice of Hearing.
2. Two days for the hearing rather than one (because of the number of parties, witnesses and a participant.)

Mr. Chan's reasons for the adjournment were that the owner wished to revise the plans to reflect the comments of staff and neighbours. He himself is unavailable on the date selected for the hearing, April 10. The applicant also intends to hire legal counsel for

the hearing, and Mr. Chan would provide expert testimony. Of the dates supplied by TLAB staff for the hearing, he would prefer June 7, 2018.

He explained that it will take time to revise the plans, and for the expert witness to review them and provide documentary disclosure based on the new plans. There must also be a zoning review to identify further variances, if any. He suggested a time frame of about two weeks for the completion of the required revisions.

Ms. DeBaker for the City responded on February 14, agreeing to the requested adjournment and the extension of the hearing to two days, on the condition that the TLAB set a fixed date for the filing of the revised plans. She pointed to the lack of such a date from the applicant, and the lack of particulars for the intended changes. She stated that the City required 30 days at least for circulation of the revisions to City departments for comment, as well as to retain outside consultants if needed, and to prepare document disclosure. In addition, she requested that TLAB canvass the parties' availability before fixing the hearing date.

Mr. Chan in his Notice of Reply to Response to Motion filed February 20 was satisfied with the 30-day period suggested by the City for circulation of the plans once submitted. He reiterated that the revisions could be available within a fifteen-day period following a new Notice of Hearing. He stated that the revisions may address the concerns of the Parties and the Participant, and may alter the witness, participant and expert witness statements that are to be submitted. There would be adequate time prior to the June 7th date.

ANALYSIS, FINDINGS, REASONS

I accept that this matter is not yet ready to be heard. The applicant carries the onus to identify and disclose any revisions to the intended plans and demonstrate satisfactory evidence to the applicable statutory tests. The parties and participants are entitled to an adequate opportunity to review these materials. All interested persons should consider whether the matters raised can be settled by discussion, or by accessing the TLAB's more informal dispute resolution mediation service. It is unfortunate that the applicant has not been diligent in addressing plan revisions and an Examiner's Notice, nor in preparing disclosure documentation and witness statements. However, I accept Mr. Chan's submissions that that process is underway and can meet a reasonable timeframe.

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The hearing of this appeal is adjourned, to be heard on Thursday, June 7 and Friday June 8, 2018 if required, commencing at 9:00 a.m., Suite 211 (2nd Floor) - 40 Orchard View Boulevard, Toronto, ON.

Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 269655 S53 31 TLAB, 17 269656 S45 31 TLAB, 17 269657
S45 31 TLAB

The Hearing date of April 10, 2018 is cancelled and no attendance is required.

The rescheduled date is contingent upon the provision of revised variances and plans within 15 days following a new Notice of Hearing. If this requirement is not met, the TLAB may be spoken to.

The hearing room will be announced in the Notice of Hearing.

The further revised exchange dates and related matters as set out in the new Notice of Hearing will govern. The City of Toronto may resubmit revised Document Disclosure should it elect to do so.

The Parties are instructed to advise the TLAB at the earliest opportunity upon any resolution of the matters, all in accordance with Rule 19.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body