

DECISION AND ORDER

Decision Issue Date Thursday, March 22, 2018

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

Appellant(s): AMIR KHASHAYAR

Applicant: MANARCH DESIGN

Property Address/Description: 40 ST IVES CRES

Committee of Adjustment Case File Number: 17 261453 NNY 25 MV

TLAB Case File Number: 18 111683 S45 25 TLAB

Motion Hearing date: Monday, March 19, 2018

DECISION DELIVERED BY **S.Gopikrishna**

APPEARANCES

Mr. John Alati for Appellants

Ms. Cheryl Lewis for herself

INTRODUCTION AND BACKGROUND

A hearing date of May 29, 2018 has been scheduled for the Toronto Local Appeal Body (TLAB) to hear the appeal respecting 40 St. Ives Crescent. The variances sought by the Applicant/Appellant respecting this property had been previously refused by the Committee of Adjustment (COA). On March 2, 2018, the Appellant's lawyer, Mr. John Alati filed a Written Motion requesting the following order of the TLAB:

- Granting an adjournment of the Hearing scheduled for 29 May, 2018 pursuant to Rule 23.4(a) of the TLAB Rules of Practice and Procedure.

The Appellants provided alternative dates for the Hearing in the event that the Motion is approved.

- In the event that the aforementioned Motion fails, an order providing Relief from Rule 16.2 of the TLAB Rules permitting late disclosure. This is pursuant to Rule 2.10, 4.4 and 4.5 of the TLAB Rules.
- Any other relief as counsel may advise and the TLAB may permit

MATTERS IN ISSUE

There are two issues to be addressed in this Motion- the first is the issue of adjournment of the case and the second is an order allowing the Appellants to provide late disclosure in the event the first part of the Motion fails.

JURISDICTION

Rule 2.10 states that The Local Appeal Body may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner

Rule 4.4 states that The Local Appeal Body may on its own initiative, or, on a Motion by a Party, extend or reduce a time limit provided by these Rules on such conditions as the Local Appeal Body considers appropriate.

Rule 4.5 states that The Local Appeal Body may exercise its discretion under Rule 4.4 before or after the expiration of a time limit and with or without a Hearing

Rule 16.2 states that the Parties shall serve on all Parties a copy of every Document or relevant portions of public Documents they intend to rely on or produce in the Hearing and File same with the Local Appeal Body not later than 30 Days after a Notice of Hearing is served.

Rule 23.4 states On a Motion for adjournment the Local Appeal Body may:

- a) grant the Motion;
- b) grant the Motion and fix a new date, or where appropriate, the Local Appeal Body may schedule a prehearing on the status of the matter;
- c) grant a shorter adjournment than requested;
- d) deny the Motion;

e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;

f) grant an indefinite adjournment if the request is made by a Party and is accepted by the Local Appeal Body as reasonable and the Local Appeal Body finds no substantial prejudice to the other Parties or to the Local Appeal Body. In this case the Moving Party must make a request that the Hearing be rescheduled or the Local Appeal Body may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;

g) convert the scheduled date to a Mediation or prehearing conference; or

h) make any other appropriate order including an order for costs.

EVIDENCE

In their Notice of Motion and Affidavits dated March 2, 2018, the Appellants explain that the reason for seeking an adjournment of the Hearing scheduled to be heard on May 29, 2018 is because of scheduling conflicts- the Appellants' lawyer Mr. John Alati and the Expert Witness Mr. Martin Rendl are scheduled to participate in a four day hearing before the Ontario Municipal Board (OMB), including the 29th of May. The Notice of Motion discusses the nature of prejudice caused to themselves if the Motion were denied at some length, including financial matters and inability to proceed with the counsel of choice should the Motion be refused.

They suggest alternate hearing dates of June 18 and June 20, 2018. Noting the fact that Ms. Cheryl Lewis was the only other Party involved in the Appeal, the Appellants assert that no prejudice would be caused to Ms. Lewis if the adjournment of "only three weeks' time" were granted..

In a separate section entitled "Document Disclosure" in his Notice of Motion, Mr. Alati also requests relief from Rule 16.2 of the Rules for making, what effectively, becomes late disclosure if the Motion for adjournment were to fail. However, he notes that if the hearing were adjourned, the date by which documents would have to be filed will be inevitably delayed. This implies, the moving Party argues, that the request for relief from Section 16.2 becomes redundant if the Motion for adjournment were successful. The Appellants' stated reasoning behind including the request for Relief from Rule 16.2 is the minimization of the duplication of time and effort in the event the Motion for adjournment was refused.

There was no response from Ms. Lewis, the other Party involved in this Appeal, to the Notice of Motion. It may be noted, in passing, that other evidentiary submissions were made by Ms. Lewis, subsequent to the Notice of Motion.

ANALYSIS, FINDINGS, REASONS

The Appellants provide the reasons for requesting an adjournment followed by an explanation of the nature of prejudice caused to them if the Motion were denied. The prejudice includes the financial aspect of hiring another lawyer and a planner if the request were denied as well as the Natural Justice principle in not allowing the Appellant to proceed with their counsel of choice. While I am satisfied with the explanations provided and agree that Parties must be allowed to proceed with their preferred agents, I am not clear about how they assert, without any detail or explanation, that there would be no prejudice caused to the other Party if the hearing were adjourned. Notwithstanding the assertion, the lack of a Reply to the Notice of Motion is interpreted to mean that there is no objection to the Appellants' request for adjournment of the case, nor does Ms. Lewis object to proceeding with the hearing on the dates suggested by Appellants.

Based on these reasons, I am inclined to grant the request for Adjournment and vacate the hearing date of 29 May, 2018. In other words, the hearing scheduled for May 29, 2018 is adjourned and there is no need for Parties and Participants to be present on 29 May, 2018.

The hearing may be held on 18th or 20th of June, 2018 depending on the availability of Members and Hearing Rooms for the Appeal. TLAB may contact the Parties to canvass other dates if it is not possible to hold the hearings on either of the specified dates.

The Appellants' Motion also requests relief from Rule 16.2 for making submissions if the Motion is denied. However, this question need not be considered where the request for adjournment is granted. The Appellants state that adjourning the date of the hearing would automatically result in delays to the deadlines for submitting documents. However, the Notice of Hearing fixes dates to be considered peremptory in the absence of a motion request for their alteration. A specific alternation to the Notice of Hearing dates would have to be granted for the submission deadlines to be varied. Since the actual hearing dates would have to be confirmed by the TLAB Staff, I find it appropriate to ask the Staff to send out a revised Notice of Hearing with a revised set of dates for exchanging documents after confirming the actual hearing dates.

No other relief has been sought by the Parties, nor is any recommended by TLAB except as provided therein.

DECISION AND ORDER

The Toronto Local Appeal Body orders that:

- 1) The Motion for Adjournment is granted. The hearing scheduled for 29 May 2018 is vacated and no appearance nor attendance by Parties and Participants are required
- 2) The Appeal will be heard on the 18th or 20th of June based on the availability of Members and a Hearing Room, failing which TLAB may canvass other dates with the Parties.
- 3) On confirmation by Staff of the available date described in (2) above, a revised set of dates and a revised Notice of Hearing will be posted.

The hearing exchange dates and related matters will change depending on the hearing date. Therefore, there is no ruling on the request for granting relief from the Rules for late disclosure.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body