

DECISION AND ORDER

Decision Issue Date Wednesday, March 28, 2018

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

Appellant(s): RONIT SHARMA

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 106 POYNTZ AVE

Committee of Adjustment Case File Number:

17 185801 NNY 23 CO (B0047/17NY), 17 185808 NNY 23 MV (A0672/17NY), 17 185812 NNY 23 MV (A0673/17NY)

TLAB Case File Number:

17 260926 S53 23 TLAB, 17 260927 S45 23 TLAB, 17 260928 S45 23 TLAB

Motion Hearing date: Thursday, March 08, 2018

DECISION DELIVERED BY D. LOMBARDI

INTRODUCTION AND BACKGROUND

On October 26, 2017, the North York Panel of the Committee of Adjustment (the "Committee") refused the consent and minor variance applications for 106 Poyntz Avenue (the 'subject property') to permit the severance of the property into two undersized lots and to permit the construction of a new two-storey dwelling on each of the newly proposed, severed lots (the "Consent and Variance Decisions").

On November 10, 2017, the Appellants, Ronit and Namita Sharma, appealed the decision of the Committee to the Toronto Local Appeal Body (the "TLAB"). The TLAB scheduled a hearing for June 5, 2018. The Notice of Hearing sent February 5, 2018, included certain dates for the required filings. These included:

- **Notice of Intention** to be a Party as per Rule 12 (Form 4) **Due** no later than February 25, 2018
- **Document Disclosure** as per Rule 16 **Due** no later than March 7, 2018
- **Witness Statement** as per Rule 16.4 (Form 12) **Due** no later than March 22, 2018
- **Expert Witness Statement** as per Rule 16.6 **Due** no later than March 22, 2018
- **Notice of Motion** as per Rule 17 (Form 7) **Due** no later than April 23, 2018

On December 5, 2017, Toronto City Council authorized the City Solicitor (the "City"), along with the appropriate City Staff, to attend the TLAB in order to oppose the Applicant/Appellant's appeal respecting the Consent and Variance Decisions for 106 Poyntz Avenue.

On December 6, 2017, the City filed a Notice of Intention (Election) to be a Party or a Participant (Form 4) and on December 7, 2017, the City corresponded by email with the TLAB Staff, providing dates for the City's availability, including that of its witnesses, for a hearing. In that correspondence, the City Solicitor (Daniel Elmadany) listed the dates on which the City's experts witnesses or the City Solicitor, or both, were not available. These dates were identified as:

- February 20-22, 2018;
- March 1-8, 2018;
- March 12, 2018;
- March 13-15, 2018; and
- April 16-27, 2018.

As of December 7, 2018, the TLAB had yet to publish the Notice of Hearing establishing a date for a future hearing. On December 14, 2017, the City Solicitor provided a further update to the TLAB, by email, indicating its unavailability on the additional dates, corresponding to the days between April 30, 2018 and May 18, 2018, inclusive.

On January 31, 2018, the City Solicitor requested from the TLAB possible scheduling dates for a hearing for the subject appeal in order to coordinate City staff availability. In turn, the TLAB advised that days in mid-June or early July were being considered as possible for a hearing date.

On February 1, 2018, the City Solicitor advised the TLAB of the City's availability in June. He specifically highlighting that the City was not available from June 1 to June 14, 2018, and was also unavailable on June 28 and June 29, 2018. The TLAB had also inquired about the City's availability on another matter before the TLAB involving the

City that had not yet been scheduled; the City also advised the TLAB to avoid a potential hearing date to conflict with that matter.

On February 5, 2018, the TLAB issued a Notice of Hearing pursuant to Rule 10.1 (Form 2) with a scheduled hearing date of June 5, 2018 at 9:00am. Upon becoming aware of the June 5th hearing date, the City Solicitor contacted the TLAB immediately to advise that, as previously indicated, the City would not be available on the scheduled hearing date, and questioned the TLAB rationale for issuing a Notice of Hearing with a date on which the City explicitly stated it was not available.

Given the matter of conflicting dates, the City was advised by the TLAB of the option to file a Notice of Motion pursuant to Rule 17 to adjourn the hearing, and on February 7, 2018, the City submitted a Notice of Motion (Form 7) requesting the following relief:

1. To adjourn the hearing date in this matter to a date to be determined by the Toronto Local Appeal Body (the “TLAB”); and,
2. Should the request to adjourn be granted, the City requests that the TLAB canvas the availability from the Appellant/Applicant, the City and any other Party before determining a new hearing date.

The Notice of Motion to adjourn was communicated to the Appellant through their Solicitor, and they responded by advising the City and the TLAB that they consented to the requested adjournment, indicating that they would be available for a hearing either on June 18 or June 20, 2018.

MATTERS IN ISSUE

This motion relies on the TLAB Practice Direction 2, “Default Format of Specific Motion Hearing,” effective October 11, 2017, and requests this motion be heard in writing pursuant to Rules 17.4, 24.1, and 24.6 of the TLAB Rules of Practice and Procedure.

When scheduling matters regarding appeals, the TLAB takes into consideration the availability of all parties. However, the TLAB Staff are governed by a number of priorities, including but not limited to: abiding by the TLAB’s Rules of Practice and Procedure (the “Rules”); availability of the TLAB Staff and Member resources; and, the availability of space to accommodate a hearing.

Under Rule 2.10, the TLAB is empowered to grant exceptions or other relief to the Rules as it considers appropriate, to enable it to effectively and completely adjudicate matters in a ‘just, expeditious and cost-effective manner’. In addition, under Rule 4.4, the TLAB may extend or reduce the time limits provided by the Rules. The availability of parties and their ability to adhere to dates when scheduling a hearing is an issue of procedural fairness and natural justice that the TLAB must take into serious consideration.

In this instance, the City has requested an adjournment based on its unavailability, including its witnesses, on the scheduled hearing date of June 5, 2018. The City Solicitor has noted that the City's Planning Division, Urban Forestry Division, Engineering and Construction Services, and Heritage Preservation Services each provided comments and conditions to the Committee with regard to this application. The City argues that the City is exercising its right to defend the planning rationale submitted to the Committee on these Appeals.

He further notes that city solicitors are assigned to TLAB hearings at the discretion of the Director, Planning and Administrative Tribunal Law, and that files are assigned based on solicitor availability, capacity and subject of interest and/or expertise.

The issue is whether to adjourn the original hearing date and reschedule the hearing to accommodate the City and its witnesses on any of the dates it has offered as available.

ANALYSIS, FINDINGS, REASONS

The City's position in its Notice of Motion is clear and facile. The City Solicitor argues that they acted swiftly in informing the TLAB well in advance of issuing the Notice of Hearing, at the request of the TLAB on February 1, 2018, and that it confirmed on numerous occasions with the TLAB that it was not available during the scheduled hearing time. As a result, the City contends that there is no prejudice to any party to change the hearing date given the short period (2 days) since the Notice was issued and the request to adjourn was made.

Further, the City maintains that if the TLAB does not grant its motion to adjourn, the City will be prejudiced in its ability to make a case, at a hearing it is unable to attend. Considering the availability of parties when scheduling a hearing is fundamentally an issue of procedural fairness and natural justice, the City has an inherent interest, particularly as a planning authority, in the outcome of the appeal process.

On the basis that the Appellant/ Applicant has not advised of any prejudice or hardship as a result of an alternative hearing date, and with the understanding that the City has communicated with the Applicant's Representative that the adjournment request is on consent, the TLAB agrees to the requested adjournment as a courtesy.

DECISION AND ORDER

1. The Motion for Adjournment is granted. The TLAB staff is requested to canvas the Parties for a new hearing date with consideration given to the available dates provided by the City and the two dates of availability advanced by the Applicant's Representative.

Decision of Toronto Local Appeal Body Panel Member: D. Lombardi

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2. The hearing scheduled for June 5, 2018 is cancelled and no appearances or attendances are required.
3. The undersigned member is not seized for the hearing in order to facilitate rescheduling.
4. Apart from the foregoing, no other changes are made to the Notice of Hearing and the obligations set out therein.

X 

D. Lombardi
Panel Chair, Toronto Local Appeal Body