

## DECISION AND ORDER

**Decision Issue Date**      Monday, March 12, 2018

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

Appellant(s): JOHN WEBBER

Applicant: JOHN WEBBER

Property Address/Description: 1322 VICTORIA PARK AVE

Committee of Adjustment Case File Number: 17 215292 STE 31 CO, 17 215293 STE 31 MV, 17 215294 STE 31 MV

TLAB Case File Number: **17 274040 S53 31 TLAB, 17 274042 S45 31 TLAB, 17 274048 S45 31 TLAB**

**Motion Hearing date:**      Monday, March 12, 2018

**DECISION DELIVERED BY** Ian James Lord

### APPEARANCES

Name	Role	Representative
JOHN WEBBER	APPELLANT/APPLICANT/OWNER	

## **INTRODUCTION**

This matter involves a property at 1322 Victoria Park Avenue (the 'subject property'). The Appellant, John Webber, filed a Notice of Motion (Form 7) and supporting Affidavit (Form 10) requesting an earlier Hearing Date than that scheduled in the TLAB Notice of Hearing, May 14, 2018.

The subject property is located on the west side of Victoria Park Avenue, south of O'Connor Drive, and at the south west intersection of Victoria Park Avenue and Galbraith, in the former Borough of East York.

This is an unsignalized 'T' intersection. An existing bungalow fronts of Victoria Park Avenue with garage access off Galbraith.

## **BACKGROUND**

The Appellant had filed applications before the Toronto and East York Panel of the Committee of Adjustment ('COA') of the City of Toronto ('City'). The applications were for the severance of the subject property to permit construction of two residential dwellings, subject to a series of variances necessary to accommodate construction of the detached dwelling units proposed. Vehicular access is proposed onto Victoria Park Avenue. The COA refused all the applications and the applicant is the sole appellant. There are no other identified parties or participants to the appeal.

## **MATTERS IN ISSUE**

The matter before the TLAB is a straightforward request for an early Hearing Date. At issue is whether the request is justified and whether, in all the circumstances, it can or should be accommodated.

## **JURISDICTION**

The TLAB Rules of Practice and Procedure contemplate the filing of Motions (Rule 17) for relief, where circumstances warrant.

Rule 2 permits relief for the purpose of ensuring a fair consideration of requests that are properly framed and supported; it states:

"2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits." (my emphasis).

## **EVIDENCE**

The Appellant and moving party represents himself as a lay citizen learning the development process from the ground up. He is the owner and resident of the subject property and appeared without representation.

On describing his intentions in respect of the applications and the appeal, he relayed his attendance before the COA and the subsequent investigations made following that unsuccessful event, allegedly following subsequent advice received through that experience.

Both in his affidavit and in evidence, Mr. Webber chronicled his urgent request for an earlier Hearing date. He noted a variety of factors, mainly economic and of a personal interest matter. He said his resources were totally committed to the subject project and that they are 'in extremis'. He asserts a readiness to proceed with a Hearing, noting the absence of interest by any other person, to date.

Certain unsubstantiated assertions were made concerning the vulnerability of the site location to a changing real estate market and in a climate of increasing interest rates, at least in apprehension. At the heart of the accommodation requested is the fact that the applicant appellant, in his words, is a 'one man show'.

I asked Mr. Webber as to his intention at the Hearing when it occurs. Despite extensive research on similar application types in the area, professional plans and discussions held with the City's Urban Forestry Division, it was clear that Mr. Webber was contemplating conducting the appeal entirely as a lay citizen without the assistance or consideration of any other evidence.

I described the statutory considerations listed in section 51(24) respecting the consent appeal, the minor variance tests under section 45(1) and the policy review compliance necessary to project an appeal.

## **ANALYSIS, FINDINGS, REASONS**

As a hearing Officer, I expressed my concern to the Appellant of his attending a Hearing of the TLAB with such a vested personal interest, without evidentiary support forming a professional assessment of planning merit. At the very least, I advised that an independent qualified support base would likely be expected from the panel Member being asked to conclude both on the long term division of land and the application of associated minor variance relief.

I described that the availability of professional land use planning evidence might be found from the City's Planning Department, who customarily only comment on applications of concern. No Planning Staff Report is evident on the pre-filings.

Planners are also accessible through the private sector.

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A Party has the right to request attendance by summons; the summons process is detailed in the TLAB Rules. Issuance of a summons requires the prior approval of the TLAB and the summons itself, if allowed, must be served in a timely manner with conduct money.

Similarly, as discussions have ensued with Urban Forestry, given the admission that there are substantial trees on the subject property, it would be necessary to have a witness or Report from the Urban Forestry Division detailing its position and conditions of provisional consent, should the appeal be allowed.

With these admonitions in mind and on the commitment of the Appellant to advance the identified evidentiary standard in a timely manner, the Appellant committed to that responsibility.

It is also noted that the other prescribed Hearing Notice dates were not requested to be altered.

There remains therefore the continuing responsibility of the Appellant to meet the obligations of the TLAB Rules respecting the early disclosure of Witness Statements and Expert Witness Statements, for all but summonsed witnesses, including lay citizen witnesses.

The alternative is to risk dismissal on a Hearing of the merits for failure to comply with the Rules or for the failure to address the many statutory and policy considerations necessary to evaluate the appeal in the public interest.

Dismissal, I warned, could close the door even to subsequent supported applications.

Mr. Webber acknowledged the responsibility and expressed appreciation for the advice on relevant considerations provided.

With reference to the above recited Rules, the TLAB recognizes that there may be exceptional circumstances that can arise to warrant the consideration of an early Hearing Date than that assigned in the Notice of Hearing. One such circumstance is presented here: a legitimate appeal from a refusal where no reasons are extant and no other party, participant or person has expressed an interest in the matter. Moreover, in the absence of any Planning or Urban Forestry Division comment, evaluation or consideration, there is no supportive or contrary evaluation raising any issues with the appeal. The Appellant has provide a semblance of need based on urgent personal circumstances and has expressed acceptance of the assumption of risk as to preparedness.

Where there is a proper Motion, no evidentiary paper of any substance and no persons of interest beyond the applicant/appellant, it seems appropriate to consider an early date, where the TLAB calendar permits.

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An early Hearing Date would appear to meet the convenience of the citizen; where the TLAB had available acceptable dates and where it is apparent that the matter can be dealt with in a timely fashion thereby freeing up a further appointment, consideration under Rule 2.2 is warranted.

On discussion as to available dates, asserting the ability to be ready, Mr. Webber expressed preference for the earliest.

On the admonishment that compliance with the disclosure Rules is obligatory, the TLAB is prepared to grant the Motion request.

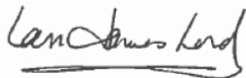
## **DECISION AND ORDER**

The Notice of Hearing in this matter is amended to appoint Monday, April 9, 2018 as an early and revised Hearing Date for the enquiry into the merits of the appeals. No other specific relief was requested or addressed and no other amendments are made to the Notice of Hearing.

The TLAB is to post a revised Notice of Hearing.

The Hearing Date scheduled for May 14, 2018 is vacated and no attendance is expected or required on that date.

X



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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord