

DECISION AND ORDER

Decision Issue Date Tuesday, April 24, 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): 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: Friday, April 20, 2018

Name	Role	Representative
Xheni Xhaferi	Appellant	A. Milliken Heisey
City of Toronto	Party	Adrienne DeBacker
Eva Pardalis	Party	
Rita Pacitto	Participant	

DECISION DELIVERED BY T. Yao

INTRODUCTION

Mr. Heisey moves to adjourn the hearing date and extend the times for filing certain documents.

ANALYSIS, FINDINGS, REASONS

The Background is set out in a previous motion decision by TLAB Member Gillian Burton. That motion was brought by Mr. Christian Chan, Ms. Xhaferi's planner. At that point Ms. Xhaferi had not retained Mr. Heisey.

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. [November 27, 2017]. 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.

Ms. Xheni Xhaferi's Notice of Appeal, presumably written even before Mr. Chan was retained, stated:

Decision made by Committee of Adjustment was not fair, therefore we are appealing their decision. We have made the required changes on the plan to meet the City's rules. The lot frontage is 7.62 m and the lot area is 232.2 m square. We have seen more than 6 houses built the same way, with the same square footage in our neighborhood.

Ms. Burton went on:

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 [Mr. Chan] acting on behalf of the applicant, returnable on February 22.

Ms. Burton recounted the position of the City of Toronto, and submissions of Mr. Chan, the applicant's planner:

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

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suggested a time frame of about two weeks for the completion of the required revisions.

Ms. DeBacker 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

The result was that Ms. Burton acceded to Mr. Chan's request and suggested time frames. The new Notice of Hearing issued as a result of her Decision moved the hearing date forward from April 10 to June 7 and 8, 2018. The Applicant's Disclosure was moved from January 11 to March 9, 2018. On March 14 and 15, 2018, Mr. Heisey (Ms. Xhaferi's newly hired lawyer) filed Applicant's Disclosure advising that:

Under By-law 569-2013

1. Rear deck variances eliminated
2. Roof eave projections variances unaltered
3. Minimum lot area variance unaltered
4. Frontage unaltered
5. Lot coverage variance reduced.
6. Building height variance was reduced
7. Height of exterior main walls facing lot line reduced.
8. Floor Space Index variance reduced
9. A (second floor) deck area variance was deleted
10. West side yard setback unaltered.

By-law 6752

1. Building height variance of 10.23 m was reduced
2. Building length variance of 17.12 m "Variance # 2 deleted
3. FSI variance of 1.18 was reduced to .83
4. Minimum front yard setback; increase from 3.96 m to 4.31 m
5. Minimum lot area variance unaltered
6. Lot coverage variance reduced.
7. Frontage unaltered
8. West side yard setback unaltered.
9. Roof eave projections variances unaltered
10. Below grade garage variance unaltered
11. A (second floor) deck area variance was deleted

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Ms. Burton's order moved the deadline for the Expert Witness Statements from February 12, 2018 to April 9, 2018. No party has filed an Expert Witness Statement because no one knows what the variances are at the date of today's second motion for adjournment. On March 28, 2018, the Plan Examiner Anthony Di Matteo advised that the revised plans "are not correctly drawn and that were mistakes and inconsistencies that need correction before a full and final Zoning Notice would be issued". As a result, Ms. Xhaferi appears to have retained a new designer who intends to submit plans to Mr. Di Matteo on April 11, 2018 and "expects" Mr. Di Matteo to complete his work by April 18, 2018. In turn, Mr. Chan suggests a new date for Applicant's Disclosure of April 25, 2018 and a new date for Expert Witness Disclosure of May 18, 2018.

On April 6, 2018 Mr. Heisey commenced this written motion to adjourn the hearing a second time, to "after August 3, 2018" and proposed the other time lines to be pushed into the future. The City's position is to consent to this relief on a condition that the TLAB not set any new deadlines until Mr. Di Matteo has completed his review and issued a new Zoning Examiner's Notice.

In my view Ms. Xhaferi has created a difficult situation with so many changes and missteps. Rule 23.3 (adjournment factors) requires me to consider the integrity of the process and the TLAB requires all applicants to file Disclosure at the very outset so that interested neighbours and the City will know whether to elect to participate or not. Ms. Xhaferi has reversed this process; once she has discovered opposition, she has modified the original design.

I do not fault the retaining of the first designer; Ms. Xhaferi could not reasonably be expected to predict that revisions would have "mistakes and inconsistencies". But the Notice of Hearing sets out clear deadlines for documents such as the Applicant's disclosure, which she ignores at her peril. Modifying the original design of course requires a fresh zoning plan examination to identify the variances which TLAB requires the applicant to do before taking any other step.

I am the member assigned to the June 7, 2018 hearing. I reject Mr. Heisey's motion. The real question is how to give the City and other interested persons the ability to respond to variances create a process that is fair when there is disorder, solely of Ms. Xhaferi's making.

In a telephone conference call on April 24, to update information, Mr. The plans were filed with the City but Mr. Di Matteo has not had a chance to review them as he is away until April 30, 2018.

The variances are probably in the range of the March 14 and 15 2018 disclosure. I release both parties from the deadline for Expert Witness Statements imposed by Ms.

Burton. However, I will entertain at the outset of the hearing on June 7, 2018 any motion by the City or a participant:

1. To reject any or all documents filed by Mr. Heisey after April 23, 2018 because of prejudice or because there has been inadequate time to respond to that document, or for other good reason; or,
2. For an adjournment of the June 7, 2018 hearing.

My intention is that that there be an extraordinary effort by Mr. Heisey to keep all parties in the loop and there need not be any corresponding effort by the City to conform to compressed timelines and filings.

DECISION AND ORDER

Mr. Heisey's motion for adjournment is denied. There will be a further conference call 9:00 am Friday May 11, 2018. Notice is to be given to participants as well as parties.

X

Ted Yao

T. Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao