

DECISION AND ORDER

Decision Issue Date Monday, April 09, 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): DEJAN BOJIC

Applicant: TACCON INC

Property Address/Description: 82 GOVERNMENT RD

Committee of Adjustment Case File Number: 17 196228 WET 05 MV (A0614/17EYK)

TLAB Case File Number: **17 248317 S45 05 TLAB**

Motion Hearing date: Monday, April 09, 2018

DECISION DELIVERED BY G. BURTON

Parties

Taccon Inc.

Dejan Bojic

Veronika Bojic

Svetlana Bojic

Participants

Jo-Anne Kupiek

Paul Doughty

Representative

D. Artenosi

Douglas Allen

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) dated September 28, 2017 that approved certain variances for 82 Government Road. The land is located at the northeast corner of

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Government and Prince Edward Drive in Etobicoke. The neighbours to the east at 80 Government Road have objected to the decision, and have appealed. There had been an earlier COA decision on June 29, 2017 which, in the appellants' view, had rejected almost the same variances approved by the COA in the decision under appeal.

The hearing of the appeal commenced on March 5, 2018, but there was a motion for adjournment and other relief made then by Mr. Allen for the appellants. A decision on this motion was issued on March 12, 2018. The hearing was adjourned until April 27, with the directive that there would be no further adjournment of the hearing unless it is on the consent of all parties, or otherwise in accordance with the Rules.

The applicant Taccon made a motion in written form returnable on March 30, 2018 to permit it to provide professional land use planning evidence in the resumed hearing. This was supported by the affidavit of Mark Tiberia dated March 29, 2018. This part of the motion is opposed by the appellants by the motion of D. Bojic, also dated April 3.

Both sides in this matter are now requesting an adjournment of the hearing until after July 23, 2018.

BACKGROUND

The factual background for this appeal was partially set out in the decision of March 12. Responses to the myriad objections from Mr. Allen at the hearing were also dealt with in detail. Most of the responses to arguments set out in Mr. Bojic's current motion were also dealt with in this decision, or will be if the adjournment requested by both parties is granted.

RELIEF SOUGHT

The owner Taccon requests an adjournment so that the land use planner it has hired can provide professional evidence at the resumed hearing. Mr. Bojic does not try to prevent this; he merely objects to the lack of disclosure prior to the hearing. This would be relevant should the hearing proceed on April 27. This will no longer be a factor as the hearing will resume Tuesday, August 7, 2018, with disclosure dates as provided in the new Notice of Hearing.

Mr. Bojic also requests that the TLAB order the discovery of several employees of the Committee of Adjustment, as well as of the three principals of the owner Taccon. The claim is that the principals were not prepared for the hearing, causing the appellants unnecessary expense, and that they have knowledge of this "information" (presumably with respect to the reasons for not hiring a planner, although this is far from clear). They also texted one another while one was under cross examination. The resulting text messages are also sought.

ANALYSIS, FINDINGS, REASONS

This matter is hereby adjourned to Tuesday, August 7, 2018. The new Notice of Hearing will contain the new filing dates for all documents to be relied on, and especially for the expert witness statement of the planner hired by the appellant, and any responses to it. This will cure any perceived lack of notice of the documents to be relied on, as the TLAB Rules govern all parties. Thus I will not grant an exemption from the Rules for the required document disclosure.

I will also not order the discovery of any of the persons requested by the appellants. As set out in the decision of March 12, I am satisfied that variances before the COA can be determined from plans that are NOT signed or certified by an architect. They form the numeric bases of the variances requested. The TLAB, as a general practice, can accept such plans and the resulting variances into evidence. They are the best evidence, as reliable as is necessary. The TLAB finds that the drawings submitted to the Zoning Examiner do form a sufficient evidentiary basis for the requested variances. Thus there is no need to examine any of the COA staff, especially the Secretary Treasurer, Ms. Bartosik. The Plans Examiner could provide confirmation of this fact, but I see no need to examine this person because he or she could add nothing to the question of the usual method for computation of the variances.

As mentioned in the earlier decision, there is no need for an inquiry into what occurred at the COA level. This TLAB hearing is a hearing *de novo*. While it must have regard to many policy matters, the decision of the COA, and the materials before it, the TLAB is not sitting in a pure appellate role inquiring into the conduct, process, reasons or minds of COA members. If any party or participant wishes to elicit evidence truly relevant to the re-examination of the matter, the onus is upon them to meet that obligation.

I also see no reason whatsoever to examine the individual principals of the landowner at this time. I accept the statements in paragraphs 9 to 12 in the owner's motion that the individuals have little experience with the process before the TLAB. Although there may be circumstances that warrant a suggestion, The TLAB would not lightly decide that appellants or other persons need to hire experts, lawyers or planners, in order to plan for a hearing and to appear before it. To make such matters obligatory would erode the TLAB's attempts to accommodate all persons on appeals. Where a party elects to have counsel or a representative and calls professional evidence, the Rules for pre-filing of documents apply. In this case, there will be more than adequate time for the owner's professional witness to file documents on which he will rely. The neighbours will also have time to respond to that filing.

The argument made that the owners possess "relevant and necessary information with regards to the admitted lack of due diligence in preparing" for the hearing does not strike me as relevant or necessary for the hearing on the planning merits. This matter is in the course of an appeal hearing that has not yet been finalized. I am not prepared at this time to order such a discovery. If the real issue referred to is raised and pursued at a later date, it can be dealt with at that time.

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The argument that the appellants should have the right to object to documents intended to be used at the hearing before they are entered as evidence is a matter that can be raised by a challenge at the hearing. It is not generally a matter for relief before the hearing when the full gamut of issues and supporting materials are being assembled.

Paragraph 22 of the affidavit is virtually impossible to understand. It reads:

“22. Mr. Bojic seeks the right to make submissions with regards to TLAB deliberations, examination and find with to every Document or relevant portion of public Documents they intend to rely on or produce in the Hearing before those documents are entered as evidence as request by Taccon Inc.”

I am not prepared to interpret this or to act upon a possible misinterpretation of its substance.

As set out in the earlier decision, the owners stated that they had no interest in any mediation process with the appellant neighbours. While I have the jurisdiction to order non-binding mediation, I am not convinced it is appropriate in this circumstance or at this time. I therefore will not make any such order as requested in paragraph 11 of Mr. Bojic’s affidavit.

I find that any alleged prejudice to the appellants in the fact that messages might have been exchanged during a witness’ cross examination will be cured by the resumption of the hearing, perhaps with another witness. Therefore there is no need to examine the owners for discovery on this ground, as raised.

DECISION AND ORDER

1. This hearing will reconvene on **Tuesday, August 7, 2018**. The date of April 27 is vacated. The hearing on the merits will continue on August 7.
2. The Notice of Hearing for this new hearing date will direct the parties as to the filing dates for all new evidence.
3. No further adjournment of the hearing will be granted unless it is on the consent of all parties, or otherwise in accordance with the Rules.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body