

DECISION AND ORDER

Decision Issue Date Thursday, May 24, 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): Sam Radhakrishnan

Applicant: Heather Breeze

Property Address/Description: 137 Dunvegan Rd

Committee of Adjustment Case File Number: 17 159367 STE 22 MV (A0544/17TEY)

TLAB Case File Number: 18 144988 S45 22 TLAB

Motion Hearing date: Tuesday, May 22, 2018

DECISION DELIVERED BY G. Burton

INTRODUCTION

This is a decision on a written Motion, brought by the applicant, Mr. Patrick Jabbaz, the owner of 137 Dunvegan Road in the Forest Hill area of Toronto. It was made in the context of an appeal to the Toronto Local Appeal Body ("TLAB") by the neighbour to the east and rear of the subject property, Dr. Sam Radhakrishnan at 146 Forest Hill Road. The appeal is from a March 28, 2018 decision of the Committee of Adjustment (the "COA") which granted variances to permit the construction of a new three storey detached dwelling with a rear integral three car garage.

BACKGROUND

As is its usual procedure, the TLAB sent a Notice of Hearing to all known parties and participants before the COA. The Hearing Date is September 5, 2018. The Notice contained many filing dates. Form 4, the submission of election of Party and Participant Status was to be filed on May 22, 2018, and the evidence and expert reports a week later. The owners wish to postpone these required filings, and ask the TLAB to provide later dates, due to ongoing settlement discussions.

MATTERS IN ISSUE

TLAB has formulated a policy for the filing of prehearing motions. They should not be returnable until some ten days AFTER the date provided for interested persons to file their intention to become a party at the TLAB hearing (Form 4). This practice was adopted in response to a problem that arose after some prehearing motions, usually for adjournments, were filed well before the date for expressions of intent to become a party. Thus some interested persons did not get notice of the motion, as they were not yet shown on the file list of interested persons on the website. Requiring any motions to be filed some days after this selection of party status was intended to address this problem. (Note that it is only parties who have the right to receive Notices of Motion and to respond to motions, under Rules 17.6 to 17.10 of the TLAB Rules of Practice and Procedure.)

However, the instant case provides an example that the TLAB solution for the filing of prehearing motions cannot be a “one size fits all” rule. To refuse to consider this particular motion now would lead to the very problem that the Applicant/owner is trying to avoid, prehearing preparation and filing of extensive materials required for the hearing itself that may not be needed. Should the matter settle, all such preparation time and effort could be wasted.

JURISDICTION

The TLAB has exercised its power under the *Statutory Powers Procedure Act* to make Rules governing its procedures. Rule 17 of the TLAB Rules for Motions provides no specific rules for the date to file a written motion, unlike Rule 17.6 for one heard by oral or electronic means. This requires filing a Motion 15 days before the date that it is to be heard. Therefore the TLAB had determined to require service after the expression of intention to become a party to the hearing, as outlined above.

EVIDENCE

Both of the parties identified as of the May 22 motion return date, wish to postpone the exchange dates by approximately six weeks. This would enable them to continue settlement discussions. This would not only facilitate these discussions, but also prevent the contemporaneous preparation of written materials for a contested hearing. The appellants concur with this request. I note that the City of Toronto filed, on May 22, its intention to become a party to the appeal. Therefore it must be added to the list for notification of this Decision as well as to any future settlement discussions and exchange of materials.

ANALYSIS, FINDINGS, REASONS

I have decided to make a minor exception to the “10- day practice rule” for the fact situation in this case. The TLAB will accept this Motion in written format. I have waited until after the May 22 date for filing a Form 4 Intention to become a Party or Participant. The City of Toronto will be added as a Party, as it filed this intention on May 22. Even if there are more parties (via an approved exception to the Rule for filing such a request), in my view no one would be likely to be prejudiced.

This Motion request would just extend filing dates. In this matter this extension would be in the interest of resolution of the appeal, as well as saving time and money as the mover claims. Any person filing as an added Party in the hearing would only be pleased to have a time extension, I would think.

DECISION AND ORDER

The Motion is granted. The Notice of Hearing issued by the TLAB in this matter on May 1, 2018 is hereby amended by substituting for the filing dates therein the following:

- **Document Disclosure** as per Rule 16 **DUE** no later than July 23, 2018
- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than July 30, 2018
- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than July 30, 2018
- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than July 30, 2018
- **Notice of Motion** as per Rule 17 (Form 7) **DUE** no later than August 17, 2018

In every other respect, the Notice of Hearing remains as issued. Staff are requested to post this disposition, and include the City of Toronto in the required Notice.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body