

DECISION AND ORDER

Decision Issue Date Thursday, May 31, 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): NICHOLAS SKOURAS

Applicant: NARGES NASSIRI TOOSI

Property Address/Description: 18 ASTLEY AVE

Committee of Adjustment Case File Number: 17 209586 STE 27 MV (A0836/17TEY)

TLAB Case File Number: **17 278673 S45 27 TLAB**

Motion Hearing date: Monday, May 28, 2018

DECISION DELIVERED BY L. MCPHERSON

INTRODUCTION AND BACKGROUND

On December 6, 2017, the Committee of Adjustment ("Committee") for the City of Toronto ("City") approved a minor variance application to permit the construction of a new two-storey detached dwelling with an integral garage at 18 Astley Ave ("the subject property"). On December 21, 2018, the owner of 16 Astley Ave, the adjacent property, appealed the Committee's decision to the Toronto Local Appeal Body (the "TLAB"). The TLAB scheduled a hearing for June 25, 2018. No other Parties or Participants have been identified.

On May 14, 2018, the Appellant filed a Notice of Motion requesting that the hearing be adjourned to another date, as he has not yet been able to retain an expert in municipal law. The Motion requests that the hearing be rescheduled to a date when counsel, to be retained, advises the TLAB of availability. The Appellant indicated that he has retained counsel to represent him in the matter of a dispute that has arisen over a tree removal by the Applicant that had occurred without his consent.

The Motion was in Writing.

In the Notice of Appeal, the Appellant identified his objection to the removal of one or more mature trees to allow for the relocation of the parking from the north side of the

**Decision of Toronto Local Appeal Body Panel Member: L. McPherson
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property to the south side. Specifically, the Appellant identified a border tree which would need to be destroyed or removed to accommodate the driveway. The Appellant alleges that removal of the tree would be contrary to a letter signed by the Applicant with a mediator on December 6, 2017 which states that the tree will not be removed or damaged. The Appellant alleges that the Applicant made a false assumption that the tree was his and did not state that it was a border tree.

On May 22, 2018, counsel for the Applicant, Ms. Amber Stewart, provided a Notice of Response to the Motion advising that her client objects to the Motion for Adjournment. Ms. Stewart advised that the tree, which was the subject of the dispute, had been removed in February 2018, in accordance with a permit issued by the City. Included in the material filed by Ms. Stewart was an email from the Assistant Planner, Tree Protection and Plan Review for the Urban Forestry Division of the City advising that, of the two trees to be removed, one would need to be removed in order to accommodate an as-of-right build and the other is in very poor condition.

Ms. Stewart noted that in the Affidavit accompanying the Motion for Adjournment, the Appellant alludes to his intention to commence litigation in respect to the tree removal which she advises is a civil matter outside the scope of the TLAB's jurisdiction and unrelated to the merits of the minor variance appeal. She further indicated that the only ground for the appeal related to the tree. She submitted that the decision to continue the appeal is frivolous and without any planning merit. Further, she indicated that the Appellant has not filed any documentation, Witness Statement, or any other material to demonstrate that the Appeal would raise any legitimate land use planning grounds. She submitted that her client has been put to expense and delay, including the retention of counsel and a land use planner, and has filed all documents in accordance with the obligations under the TLAB Rules. Further, that granting an adjournment would result in further prejudice as a result of further delays incurred. Ms. Stewart referenced Rule 23.1 of the TLAB's Rules of Practice and Procedure which provides that hearing dates are fixed and will take place on the set date.

The grounds for considering an adjournment in Rule 23.2, in her submission, do not support the granting of the request:

- The Rules do not prevent Mr. Skouras from retaining counsel at a later stage in the proceeding. The hearing is still more than one month away, which will allow Mr. Skouras time to retain counsel if he wishes. Moreover, Mr. Skouras' desire to retain counsel does not explain or excuse his failure to file documents and a Witness Statement as required by the Rules.
- It would be unfair to her client, Ms. Toosi, who has followed all of her obligations as an Applicant in this proceeding, to have the hearing delayed because Mr. Skouras has not prepared for this appeal or filed any material in support of the appeal.
- The adjournment request was not made in a timely fashion. The Notice of Hearing was issued on February 23, 2018. The Appellant waited almost three months to bring the adjournment motion.
- The adjournment will cause further delay to Ms. Toosi, including the attendant expenses. By contrast, there is no evidence of actual harm or prejudice to the Appellant if an adjournment is not granted. Mr. Skouras has only indicated that he would like more time to retain counsel, who may or may not be available. With

over one month remaining until the hearing, it is unnecessary and unfair to grant Mr. Skouras a delay in the hearing. He has enough time to retain counsel should he choose to do so, and he should ensure that any counsel he is considering retaining is available for the June 25 hearing date.

In summary, Ms. Stewart, on behalf of the Applicant, requested that Mr. Skouras' motion for an adjournment be dismissed, and that the hearing proceed as scheduled on June 25, 2018.

On May 28, 2018, Mr. Raj Kehar of Wood Bull LLP advised the TLAB that he had been retained to represent the Appellant and indicated that his client has serious concerns with the minor variance application and whether it complies with a settlement agreement that was reached between the Parties before the Committee through the Committee's mediation pilot program. There were no other details provided regarding the serious concerns or the referenced settlement agreement.

JURISDICTION

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'. Rule 23.4 of the TLAB's Rules of Practice and Procedure allows the TLAB to grant or deny a Motion for Adjournment and make any other appropriate orders.

ANALYSIS, FINDINGS, REASONS

The TLAB is committed to fixed and definite Hearing dates. Rule 23.3 of the TLAB's Rules of Practice and Procedure states that: " in deciding whether or not to grant a Motion for an adjournment the Local Appeal Body may, among other things, consider:

- a) the reason for the adjournment;
- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the Local Appeal Body's process;
- d) the timeliness of an adjournment;
- e) the position of the other Parties on the request;
- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
- g) the effect an adjournment may have on Parties, Participants or other Persons;
and

h) the effect an adjournment may have on the ability of the Local Appeal Body to conduct a Proceeding in a just, timely and cost effective manner. “

In addition, Rule 7.2 states that an Appeal must set out the reasons and grounds which form the substance of the Appeal.

Having considered the evidence and the correspondence before me, I find that the Motion for Adjournment is not properly supported. In any appeal, the Appellant has a responsibility to meet the requirements as set out in the Rules of Practice and Procedure and come forward for relief with clear intent. The Appellant has not complied with any of the dates provided to submit documents or Witness Statements in support of the appeal. The key issue, as stated in the Notice of Appeal, relates to the removal of a tree which has since been removed under a permit from the City. It would appear that the Appellant has retained counsel in regard to that issue, the litigation component of which is unrelated to the variances before the TLAB. There were no concerns identified in the Appeal regarding any of the variances or any planning issues, other than tree removal, which has already taken place. With only one Appellant, a further delay would prejudice the Applicant and deny a just, expeditious and cost-effective determination of the Appeal.

The Parties are advised to conduct a full and frank discussion between themselves with a view to resolving this matter, if possible. While I decline to order mediation, it is desirable to resolve differences consensually rather than in an adversarial setting.

DECISION AND ORDER

The motion for an adjournment is dismissed. The hearing shall proceed as scheduled on June 25, 2018.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body