

DECISION AND ORDER

Decision Issue Date Monday, June 04, 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): SHARIF AHMED

Applicant: PETER JARUCZIK

Property Address/Description: 46 SUNNYPPOINT CRES

Committee of Adjustment Case File Number: 17 261477 ESC 36 MV (A0442/17SC)

TLAB Case File Number: 18 114149 S45 36 TLAB

Motion Hearing date: Thursday, April 26, 2018

DECISION DELIVERED BY G. BURTON

APPEARANCES

Role	Name	Representative
Applicant	Peter Jaruczik	
Appellant	Sharif Ahmed	Amber Stewart, Csl
Party	Raphael Vigod	
Party	Doug Colby	
Party	Wendy Hooker	
Party	James Ross	Wendy Hooker
Party	Suzette Dianne Mills	
Party	Denise Hodgson	

Party Patrick Henry

Party Alan Burt

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by Sharif Ahmed from a decision of the Committee of Adjustment (COA) dated January 18, 2018 which refused his application to construct a three-storey detached dwelling at 46 Sunnypoint Crescent in Scarborough (property).

The TLAB had set a hearing date of July 4, 2018 for the appeal to be heard. However, Ms. Stewart, counsel for the owner and appellant, made a motion (considered in written form) for a later hearing date. She is to be out of the country on the scheduled July 4.

BACKGROUND

The Property is located on the west side of Sunnypoint Crescent, east of Brimley Road south and south of Kingston Road. The Property is zoned Single Family Residential (S) under the Cliffcrest Community Zoning By-law No. 9396, as amended, and Residential Detached (RD) under the City of Toronto Zoning By-law No. 569-2013, as amended.

MATTERS IN ISSUE

The principal issue was to determine if the appellant has the right to the counsel of their choice. If so found, it is necessary to select an appropriate date for both the TLAB and Ms. Stewart. No other party has responded to the Notice of Motion.

ANALYSIS, FINDINGS, REASONS

Ms. Stewart made the argument in her Notice of Motion that a party should have their choice of counsel or representative. The accompanying affidavit provided proof of her assertion that she would be out of the country on the date already selected.

The issue then is whether the stated hearing date should govern, or whether there should be some latitude extended. The appellant could then be represented by the solicitor selected, rather than find another. Where legal firms are large, with many counsel who can step in to substitute for the responsible solicitor, it is usual to require that another solicitor appear on the date scheduled for the hearing of an appeal. However, Ms. Stewart is a sole practitioner with no ability to carry out this transfer.

The principal argument in favour of the Motion is that scheduling the hearing on a day that the selected representative is not available prejudices the appellant's ability to call their case. This panel accepts that, in general, considering the availability of parties when scheduling a hearing is an issue of procedural fairness and natural justice, particularly when it is the availability of the party responsible for triggering the appeal process. The TLAB's Rules of Practice and Procedure, Rule 23.4, requires that the tribunal consider, among other matters, whether an adjournment would affect the interest of the parties in having a full and fair proceeding (clause b).

This panel agrees with the appellant's argument that the unavailability of its representative in this circumstance prejudices the ability to call its case. Matters before other tribunals have involved a direction to find a substitute representative, usually where the party requesting the adjournment has caused significant delay. This is not such a case.

I find that the date suitable to both the TLAB and Ms. Stewart, July 26, 2108, is satisfactory for the hearing.

DECISION AND ORDER

The Motion is allowed and the matter is adjourned to be heard on July 26, 2018 at 9.30 a.m. in TLAB Hearing Room 2. The previous hearing date of July 4 is cancelled and no attendance is necessary. No other changes will be made to the Notice of Hearing.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body