

# DECISION AND ORDER

**Decision Issue Date**      Thursday, June 21, 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): GRACE PALUMBO-EREMITA

Applicant: ARMANDO BARBINI

Property Address/Description: 11 BRAEMAR AVE

Committee of Adjustment Case File Number: 17 145980 STE 22 MV

TLAB Case File Number: **18 114194 S45 22 TLAB**

**Hearing date:**      Thursday, June 14, 2018

**DECISION DELIVERED BY D. Lombardi**

## APPEARANCES

<b>Name</b>	<b>Role</b>	<b>Representative</b>
Armando Barbini	Applicant	
Wen Chen De He	Owner	Steven Baklarian
Roberto He Chen	Owner	
Grace Palumbo-Eremita	Appellant	Esther Connors
Jeffrey Sprang	Participant	
Robert Brown	Paid Representative (for the Appellant)	

## **INTRODUCTION**

This Hearing is in the matter of an appeal to the Toronto Local Appeal Body (the TLAB) by Ms. Grace Palumbo-Eremita of the decision of the Toronto and East York Panel of the Committee of Adjustment (the COA) to approve minor variances to construct a new two-storey dwelling with an integral garage at 11 Braemar Avenue (the subject property).

## **BACKGROUND**

On January 17, 2018 the COA approved a total of nine minor variances, with conditions, to permit a new two-storey detached dwelling with an integral garage on the subject property.

The Appellant, Ms. Palumbo-Eremita is the neighbor immediately to the south, and who owns and resides at 7 Braemar Avenue.

On January 10, 2018 the Appellant appealed the COA decision and the TLAB issued a Notice of Hearing pursuant to TLAB's Rules of Practice and Procedures (the Rules) setting a hearing date of June 14, 2018.

At the June 14, 2018 hearing, the Appellant attended and was accompanied by her legal representative, Ms. Esther Connors. Also in attendance was Jeffrey Sprang, a Participant in the hearing, and Mr. Robert Brown, of Committee of Adjustment and Local Appeal Body Advisory Services, a consultant retained by the Appellant.

Ms. Wen Chen De He, the owner of the subject property also attended the hearing along with her husband and daughter. Absent from the hearing was the Applicant, Mr. Armando Barbini. Instead, the Owner was represented by Mr. Steven Baklarian, of S & P Developments, the builder retained to construct the proposed residential dwelling.

Prior to her opening remarks, the Appellant's legal representative, Ms. Connors, submitted two emails dated March 7, 2018 and March 19, 2018, respectively (Exhibit A), addressed to the Applicant, detailing conversations between the Appellant's consultant, Mr. Robert Brown, and Mr. Barbini.

Referring to those emails, Ms. Connors noted that she had attempted to contact the Owner through the Applicant to express the Appellant's desire to investigate any interest on the Owner's part to engage in mediation through the TLAB.

Ms. Connors noted that she had not received a response from the Applicant to the March 7<sup>th</sup> email and highlighted that a second attempt was made to contact the Applicant by email on March 19, 2018. That email also failed to elicit a response. She opined that this seemed rather curious since Mr. Brown had met with both the Owner's

architect and Mr. Baklarian on two occasions in between the first email and the follow-up email.

In attempting to clarify matters, Mr. Baklarian advised that the Applicant, Mr. Armando Barbini, had fallen ill shortly after the January 17, 2018 COA hearing and has continued to be incapacitated as a result. He further noted that Mr. Barbini had been unable to continue with this file and it had ceased to be a priority.

Mr. Baklarian stated that due to Mr. Barbini's illness he had recently assumed responsibility for the file on the Owner's behalf and acknowledged that communications between the Parties prior to the hearing had been inconsistent and insufficient. He advised that in Mr. Barbini's continued absence, he would be representing the owner at the hearing and was prepared to proceed with the matter.

In clarifying his previous discussions with Mr. Brown, Mr. Baklarian confirmed that he had, in deed, spoken with him regarding revisions to the drawings, and specifically about the south wall elevation of the proposed dwelling, which he understood represented the 'only' outstanding issue from the Appellant's perspective.

In view of these discussions, Mr. Baklarian suggested that the Owner was prepared to address any other issues raised by the Appellant. He noted that the Owner was unaware of the Appellant's desire to mediate this matter, as that correspondence had been addressed to Mr. Barbini, and had not been brought to his attention.

As Mr. Baklarian and the owner were unfamiliar with the mediation process, he asked for clarification as to the mediation process and whether mediation between the Parties could be accommodated through the TLAB.

Mr. Brown confirmed that he had met with Mr. Baklarian and his architect to review revised drawings of the south wall elevation. Although he submitted that the south wall elevation was not the only issue of concern to the Appellant, he did concede that it was, in fact, a 'primary' issue of concern.

In striking a conciliatory note, Mr. Brown did suggest that the neighbours were open to continuing meaningful dialogue with the Owner to determine if one or more of these issues can be resolved in a collaborative way.

At this point, I advised all parties that mediation, as a dispute resolution strategy, is contemplated in the TLAB Rules (Rule 20), and I noted that mediation is encouraged where the TLAB is satisfied there is good reason to believe one or more of the issues in dispute may be resolved.

Following opening remarks, I queried the parties as to whether they was genuine interest in pursuing mediation in this matter. In receiving a positive response to this question, I recessed the hearing so that each party could caucus to consider this option further.

When the hearing reconvened, Mr. Baklarian advised that the owner was very interested in pursuing mediation with the hope of a settlement of the issues in dispute.

However, Ms. Connors advised that the Appellant was opposed to entering into mediation at this time. This was somewhat surprising given the March 7<sup>th</sup> email to the Applicant stating that the Appellant was requesting mediation. In further elaborating, Ms. Connors advised that the Appellant simply wanted the opportunity to first review any new or revised material before committing to future mediation with the Owner. When I questioned her as to whether the Appellant was reluctant to enter into mediation at all, Ms. Connors confirmed that the Appellant was 'open to the idea'.

The Parties subsequently requested that the hearing be adjourned to allow Mr. Baklarian to submit to TLAB the outstanding delinquent filings identified by the Appellant's solicitor, and that the due dates be compressed to expedite matters.

The filings required from the Applicant are to include:

- Applicant Disclosure
- Document Disclosure
- Witness Statement

In addition, it was agreed that the parties be canvassed by TLAB staff in order to determine the availability of the parties for a future date for mediation and a full hearing..

## **MATTERS IN ISSUE**

Mr. Barbini's illness and subsequent lack of file coordination on this matter has created a disconnection that has resulted in a lack of substantive communications between the two parties prior to the hearing. It is now clear that the minimal dialogue that has occurred has been sporadic and disjointed, and has simply added to the confusion and misunderstanding between the parties.

Mr. Baklarian has now updated the TLAB and Appellant as to the status of the Applicant, and has confirmed that he has replaced Mr. Barbini and is now representing the owner going forward.

Mr. Baklarian has agreed to submit the necessary documents to advance this matter before the TLAB and the Appellant is supportive given the extenuating medical circumstances.

Both Parties have expressed an interest in pursuing mediation, although one more enthusiastically than the other at this stage in the process. It is my summation that the Appellant is proceeding cautiously and is attempting to preserve her right to engage in meaningful mediation once she has had an opportunity to review any new/revised documents submitted by the Owner, including the revised drawings referred to by Mr. Baklarian.

In order to accommodate these filing, both parties agreed to adjourn the hearing and to the new requisite exchange dates.

## **JURISDICTION**

Under the TLAB Rules of Practice and Procedures, and particularly Rules 2.2, 2.3, 2.5, and 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'

In addition, under Rules 4.4 and 4.5, the TLAB may extend or reduce the time limits provided by the Rules. The availability of parties and their ability to adhere to the filing dates when scheduling a hearing is an issue of procedural fairness and natural justice that the TLAB must take into consideration.

Rule 19.1 underscores that the TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, exchange and mediation.

Finally, under Rule 20.2, the TLAB may direct parties to attend non-binding mediation if the TLAB is satisfied that there is good reason to believe one or more of the issues in dispute may be resolved through mediation.

## **EVIDENCE**

The emails submitted by the Appellant dated March 7, 2018 and March 19, 2018, and sent to the Applicant (Exhibit A), demonstrate that the Appellant is interested in an opportunity to pursue mediation with the Applicant through the TLAB to narrow the issues in dispute in this appeal.. At the hearing, the owner confirmed that she is also interested in pursuing mediation in order to reach a potential resolution.

However, as a precursor to any consideration to enter into mediation, Ms. Connors stated that the Appellant would like to review any new and revised documents with respect to the proposed development before committing to this course of action, which is the Appellant's prerogative.

The Owner has agreed to expedite the submission of the necessary documentation to the TLAB in order to preserve any opportunities for mediation. The Appellant advised the panel member that she is supportive of the extension to filing dates.

## **ANALYSIS, FINDINGS, REASONS**

In view of the information provided at the hearing, I find that there is consensus from the parties that the Applicant be given additional time to file the documents referenced by Mr. Baklarian and I have agreed to identify new submission dates based on the recommendations from both parties.

I find that the new dates will accommodate the requirements of all parties, and will facilitate the parties engaging in any potential and meaningful, without prejudice, settlement discussions.

The parties at the hearing expressed a desire to continue a productive dialogue on outstanding issues and I submit that permitting an extension for the submission of new or revised drawings will ultimately facilitate a hearing process which is just, expeditious, and cost effective.

Given the extenuating circumstances related to the illness of Mr. Barbini, and the fact that the Appellant has not advised me of any prejudice or hardship as a result of a later hearing date, the TLAB has agreed to an adjournment to allow the Applicant the opportunity to submit the necessary and requisite documentation. This will allow the Appellant the time to review these documents and to determine whether to engage in mediation and possible settlement discussions.

Ms. Connors advised that she will be taking maternity leave shortly and requested that the TLAB take this into consideration in scheduling any future hearing dates.

## **DECISION AND ORDER**

The TLAB adjourns the hearing and sets the following dates:

- TLAB staff is requested to canvas the Parties for a new hearing date prior to August 17, 2018;
- The exchange dates for disclosure and Witness Statements by the Applicant is July 6, 2018, failing which the Applicant may seek further but limited relief.
- TLAB staff is requested to canvas the Parties for a date for possible non-binding mediation, if it is so requested, and to notify all parties in writing of the time, date and location of the mediation. This will occur prior to the new hearing date, or prior to August 17, 2018.

The undersigned member is not seized for the hearing in order to facilitate rescheduling.

X 

---

Dino Lombardi  
Panel Chair, Toronto Local Appeal Body