

DECISION AND ORDER

Decision Issue Date Monday, July 16, 2108

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): DIONISIOS DIMITRIOS KOSMATOS

Applicant: DIONISIOS DIMITRIOS KOSMATOS

Property Address/Description: 8 PARKLEA DR

Committee of Adjustment Case File Number: 18 137509 NNY 26 MV

TLAB Case File Number: **18 170140 S45 26 TLAB**

Motion Hearing date: Friday, July 13, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

Name	Role	Representative
DIONISIOS DIMITRIOS KOSMATOS	Appellant	MATTHEW DI VONA
ANGELA LAM PERIETEANU	Participant	
JEFFREY YIM	Participant	
SARAH CATHERINE ZIMMERMAN	Participant	
GEOFF KETTEL	Participant	
BRYAN DOUGLAS ECKEL	Participant	
FRASER HOLMAN	Participant	

INTRODUCTION

This is a motion brought on June 25, 2018 by the appellant in the appeal of a May 17, 2018 decision of the Committee of Adjustment (COA). This decision refused the applicant's request for variances to construct a new two-storey detached dwelling with an integral garage at 8 Parklea Drive in Leaside (in the Eglinton Avenue East and Laird Drive area.)

The TLAB had set September 27, 2018 for this appeal to be heard. However, Mr. Matthew Di Vona, counsel for the owner Mr. Kosmatos, filed a Notice of Motion on June 25, 2018 (to be considered in written form on July 13, 2018), for a later hearing date. He has a scheduling conflict, with a prior assignment to appear at a Local Planning Appeal Tribunal (LPAT) hearing on September 27.

BACKGROUND

The subject property is located on the north side of Parklea Drive, southwest of Laird Drive and Eglinton Avenue East, east of Bayview Avenue. The property is designated Neighbourhoods in the City of Toronto Official Plan (OP) and zoned RD (/72.0; a370; d0.6,) in the City of Toronto Zoning By-law No. 569-2013 (the New By-law) and R1B in the former Leaside By-law No. 1916 (the old By-law).

Six persons have selected Participant status in this appeal. They were properly served with notice of this Motion. By TLAB Rules 17.6 and 17.7, only Parties can respond to Motions, and not Participants. Thus there were no Responses as of July 13, the return date.

MATTERS IN ISSUE

The principal issue in this Motion is whether the appellant has the right to counsel of their choice. If so found, it will be necessary to select an appropriate date for both the TLAB and Mr. Di Vona. Mr. Di Vona had earlier accepted the date of October 10, 2018 suggested by TLAB staff.

ANALYSIS, FINDINGS, REASONS

Mr. Di Vona made the argument in his Notice of Motion that a party should have their choice of counsel or representative. The accompanying affidavit of Mr. Luca Zuliani provided proof of his assertion that he would be appearing at an LPAT appeal on the date already selected. Mr. Di Vona had appeared for the owner and applicant at the COA hearing, and so has extensive knowledge of the file.

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 having to 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, Mr. Di Vona appears to be a sole practitioner, with no ability to carry out such a transfer.

The principal argument in favour of accepting an adjournment 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 or representative who was 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 Mr. Di Vona, October 10, 2018, is satisfactory for the hearing.

DECISION AND ORDER

The Motion is allowed and the matter is adjourned to be heard on October 10, 2018 at 9.30 a.m. in TLAB Hearing Rooms. The previous hearing date of September 27 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