

DECISION AND ORDER

Decision Issue Date Thursday, July 19, 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): JOHN IVAN PERSIC, JASON PERSIC

Applicant: EKP DESIGNS INC

Property Address/Description: 133, 137 SHERWOOD AVE

Committee of Adjustment Case File Number: 17 198702 NNY 25 MV (A0683/17NY),
17 200597 NNY 25 MV (A0682/17NY)

TLAB Case File Number: 18 141139 S45 25 TLAB, 18 141144 S45 25 TLAB

Motion Hearing date: Monday, July 16, 2018

DECISION DELIVERED BY D. LOMBARDI

INTRODUCTION

This matter relates to an appeal by John and Jason Persic, the owners of the properties municipally described as 133 and 137 Sherwood Avenue (the subject property) of a decision of the North York Panel of the Committee of Adjustment (COA) refusing minor variance applications COA File No. A06821/17NY and COA File No. A0683/17NY.

The owners are proposing to replace the two existing two storey detached dwellings with a new two storey semi-detached residential dwelling with integral garages, with one half of the semi-detached dwelling being proposed on each lot.

Since the applications, identified as TLAB Case File No. 18 1411139 (S. 45 (25)) and TLAB Case File No. 1411144 (S.45(25)) are related, the owners requested that the Toronto Local Appeal Body (TLAB) consolidate both appeals and schedule them to be heard together. As a result, the TLAB scheduled a hearing date of August 17, 2018.

Ms. Lynn Holloran, a neighbor residing at 131 Sherwood Avenue, filed a Form 4, Notice of Intention to be a Party, on May 5, 2018, pursuant to Rule 12 of the TLAB's Rules of

Practice and Procedure. In addition to Ms. Holloran, three additional parties elected party status to this appeal, including the City of Toronto.

On June 29, 2018, Ms. Holloran's solicitor, William Roberts, submitted a Notice of Motion (Form 7) to the TLAB requesting an adjournment of the hearing scheduled for August 17, 2018. In addition, Mr. Roberts requested that the motion request be heard in writing by the TLAB at its earliest opportunity, pursuant to Rules 17.4, 24.1, and 24.6 of the Rules and in accordance with TLAB Practice Direction 2, 'Default Format of Specific Hearings'. As well, Mr. Roberts requested that the hearing date of August 17, 2018 be rescheduled to a date acceptable to all the parties.

BACKGROUND

Ms. Holloran is the neighbor immediately to the west of the subject property. As an eighteen year resident of the neighbourhood, she appeared before the COA along with a number of other residents.

As noted, she filed a Notice of Intention to be a Party to the TLAB and submitted a witness statement in opposition to the proposed development.

Ms. Holloran is a single mother with a young, eight year old son. In December of 2017, she booked a two week holiday from August 4, 2018 and August 18, 2018 for herself and her son. The purpose of the holiday is to allow her son to attend a leadership camp run by the YMCA with programs for children. The highlight of the camp is a 'performance night' for the children attending the camp in front of family and friends. Ms. Holloran's child is scheduled to perform on the night of August 17, 2018

Ms. Holloran notes that she and her son have been attending this camp for the last eight years and her family, including cousins and grandparents, also will be attending the camp at the same time. Due to various reasons, Ms. Holloran has stated that it is not possible for her to reschedule this holiday.

The Notice of Motion submitted by Ms. Holloran's solicitor submits that this is an extended family holiday event during which her son is able to reconnect with family over a two week period, as well as to acquire leadership skills at the camp.

Mr. Roberts argues that if the TLAB does not grant his client's motion to adjourn the scheduled hearing set for August 17, 2018, it will prejudice Ms. Holloran's ability to provide testimony to the TLAB regarding this matter on the scheduled hearing date. In addition, he argues that considering the availability of parties when scheduling a hearing is fundamentally an issue of procedural fairness and natural justice, particularly as Ms. Holloran is an adjacent neighbor directly impacted by this application, has direct knowledge of the impacts on her property, and has an inherent interest in the outcome of the appeal process.

In support of this request for an adjournment and rescheduling of the appeal hearing to a new date, Mr. Terry Mills, a land use planner retained by Ms. Holloran to provide expert witness evidence, submitted an affidavit (Form 10) on June 28, 2018. The affiant affirmed that Ms. Holloran is unable to reschedule her family holiday and, therefore, is unavailable to attend the scheduled hearing on August 17, 2018.

In addition, Mr. Mills confirmed that Mr. Roberts has spoken with City of Toronto Legal Department (City) and Ms. Amber Stewart, the solicitor for the Appellant/Owner, and they have consented to an adjournment provided that a date can be found to which all parties agree.

In a Notice of Response to Motion (Form 8), filed by the City on July 8, 2018, solicitor Adrienne deBaker confirmed the following: that the City consents to the relief being sought by Ms. Holloran to adjourn the hearing be heard in writing at the earliest opportunity; that the request for an adjournment of the hearing currently scheduled for August 17, 2018 be granted; and that the hearing be rescheduled to a date that the parties are available, subject to the TLAB's availability. The City also requested that the TLAB canvas the availability of the parties prior to issuing a new Notice of Hearing should the TLAB grant the request to adjourn the August 17th hearing.

Upon canvassing the parties, TLAB staff provided three possible alternative future hearing dates; October 24, 2018; October 29, 2018; and November 6, 2018. Following further dialogue amongst the parties, the TLAB was advised that both Wednesday, October 24th and Tuesday, November 6th are acceptable dates for a new hearing.

JURISDICTION AND MATTERS IN ISSUE

The parties consented to the adjournment of the hearing scheduled for August 17, 2018. 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.'

Under Rule 17.4, the TLAB may require a Motion to be held by Written Hearing or by Electronic Hearing upon such terms as the TLAB directs. Rule 23 addresses Motions and the considerations in granting an adjournment as well as the powers of the TLAB upon an adjournment motion.

Specifically, Rule 23.3, ***Considerations in Granting Motions***, provides matters to be considered in deciding whether or not to grant a Motion for an adjournment.

Considerations in this Rule include the following:

- a) *The reasons for an adjournment;*
- b) *The interests of the Parties in having a full and fair Proceeding;*
- c) *The integrity of the TLAB's process;*
- d) *The timeliness of an adjournment;*

- e) *The position of 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 others Persons;*
- 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 TLAB to conduct a Proceeding in a just, timely and cost effective manner.*

The availability of parties and their ability to participate in the scheduled hearing is an issue of procedural fairness and natural justice that the TLAB must take into consideration. In this instance, Ms. Holloran, one of the Parties, has requested an adjournment as a result of a family scheduling conflict established prior to the issuance by the TLAB of the hearing date of August 17, 2018. Ms. Holloran has advised, and it has been substantiated by her solicitor and her expert witness, that her family holiday is an annual event and cannot be rescheduled.

The issues are whether to grant the request that the Motion be heard in writing, and whether to adjourn the original hearing date and reschedule the hearing to the date noted in this decision.

ANALYSIS, FINDINGS, REASONS

With respect to the first issue, whether to grant the request to have the Motion heard in writing, Practice Direction #2, 'Default Format of Specific Motion Hearings', dated October 11, 2017, directs that "*Unless otherwise directed by TLAB, where a Party requests a date to file a Motion for a Written or Electronic Hearing (telephone or video conference) or the adjournment of a Hearing Date, or both, TLAB will treat and require the request to be conducted as a written Motion. The Party will be provided with a date for a Written Hearing motion for service. In the case of a Hearing Date adjournment request, the TLAB shall supply alternative hearing dates and the parties shall indicate their availability for those dates.*"

With respect to the second matter, whether to grant an adjournment and reschedule the hearing, Ms. Holloran has provided good reasons for abandoning the August 17, 2018 hearing date. I accept Mr. Roberts' submission that if the adjournment is not granted, Ms. Holloran will be prejudiced in her ability to make her case.

On the basis that the parties have consented to the adjournment and they have not advised of any prejudice or hardship as a result of a later hearing date, the TLAB will agree to an adjournment and reschedule the hearing on either of the two dates communicated to TLAB staff.

DECISION AND ORDER

The Motion for Adjournment is granted. A new rescheduled hearing date of October 24, 2018 is set.

The hearing scheduled for August 17, 2018 is cancelled and no appearances or attendances are required on that date.

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

X 

D. Lombardi
Panel Chair, Toronto Local Appeal Body