

DECISION AND ORDER

Decision Issue Date Monday, July 23, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): DAVOOD MORAD

Applicant: DAVOOD MORAD

Property Address/Description: 319 HORSHAM AVE

Committee of Adjustment Case File Number: 17 257755 NNY 23 CO, 17 257762 NNY 23 MV, 17 257768 NNY 23 MV

TLAB Case File Number: **18 155272 S53 23 TLAB, 18 155273 S45 23 TLAB, 18 155274 S45 23 TLAB**

Motion Hearing date: Wednesday, July 18, 2018

DECISION DELIVERED BY G. BURTON

INTRODUCTION

This is a decision on a Motion filed on June 22, 2018 by the City of Toronto. The City is a Party to appeals by the owner of 319 Horsham Ave. from decisions of the Committee of Adjustment (COA) dated April 18, 2108. The COA refused a consent to sever the parcel and related minor variances for proposed two storey dwellings on the resulting lots. The City's Motion of requests an adjournment of the scheduled hearing date of September 11, 2018 due to the unavailability of its planning witness on that day.

BACKGROUND

The site is located on the south side of Horsham Avenue, south of Finch Avenue West and west of Senlac Road. It is designated Neighbourhoods under the Official Plan (OP). It is zoned R4 in the former City of North York Zoning By-law No. 7625 (NY By-law) and RD (f15.0; a 550)(x5) in the City of Toronto Zoning By-law No. 569-2013 (New

By-law). The minor variance applications requested a total of 24 variances to the New By-law and the NY By-law, to permit the proposed dwellings on the resulting lots.

The City's planning witness, Ms. Yishan Liu, is now responsible for this file and has submitted an Expert Witness Statement in opposition to the appeal. She is scheduled to be on holidays on September 11. The City suggests either October 1 or October 18, 2018. There were no responses filed to the Notice of Motion.

The Motion was considered in written form on the date provided, July 18, 2018. This is authorized by TLAB's Practice Direction No. 2. This provides, in part:

“ 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, in the event that the Motion is granted.”

MATTERS IN ISSUE

As the City's principal if not only witness is not available on September 11, the preliminary issue to be determined is whether this absence is unduly prejudicial to the City's presentation of its case. If the answer is yes, an alternative date must be selected that is acceptable to the parties.

JURISDICTION

The TLAB may hear Motions by way of written submissions only, in accordance with its Rule 17.4 of the Rules of Practice and Procedure. It is free to alter hearing dates if convinced of the merits of the arguments in favour.

ANALYSIS, FINDINGS, REASONS

It can be seen from the Background above that this is a matter where planning evidence will be important to the ultimate resolution of the appeal. The appellant will present extensive planning evidence (Expert Witness Statement of F. Romano, filed July 10). Despite the witness' recent assumption of responsibility for this matter (Paragraph 9 of the Expert Witness Statement of Yishan Liu, filed July 10, 2018), the following paragraphs there illustrate the extent of the research already conducted for the hearing of the appeal.

The principal argument in favour of accepting an adjournment is that scheduling the hearing on a day that the selected witness is not available prejudices the appellant's ability to call their case. This panel accepts that, in general, considering the availability of parties, representatives and witnesses when scheduling a hearing is an issue of

procedural fairness and natural justice. Here it is not the availability of the person responsible for triggering the appeal process, but of the principal and knowledgeable witness for the City, a party to the appeal. The TLAB's Rule 23.4, requires that the tribunal consider, among other matters, whether an adjournment would affect the interests of the parties in having a full and fair proceeding (clause b).

This panel agrees with the City's argument that the unavailability of its experienced witness in this circumstance prejudices the ability to call its case. Matters before other tribunals have involved a direction to find a substitute, especially where there are many staff in the department who might be able to step in. I consider both the cost and convenience here in accepting the City's argument in favour of a brief adjournment of this matter.

DECISION AND ORDER

The Motion is allowed and the matter is adjourned to be heard on Monday, October 1, 2018 at 9.30 a.m. in a TLAB Hearing Room. The previous hearing date of September 11 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