

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 08, 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): KELLY O'BRIEN

Applicant: ABSTRACT DESIGN & BUILD CORP

Property Address/Description: 59 THIRTY FIRST ST

Committee of Adjustment Case File Number: 17 184906 WET 06 MV

TLAB Case File Number: **18 176208 S45 06 TLAB**

**Motion Hearing date:**      Tuesday, October 02, 2018

**DECISION DELIVERED BY** Ian James Lord

## APPEARANCES

Name	Role	Representative
Abstract Design & Build Corp	Applicant	
Kelly O'Brien	Appellant	Andy Margaritis
Tatyana Parkanskaia	Previous Owner	
Georgia Gerasimopoulos	Current Owner	
Kevin Andrew Daniel Sambirsky	Current Owner	
David Matoc	Participant	

## INTRODUCTION

This matter is scheduled to be dealt with on the above specified date. A request has been made for an early disposition, premised on somewhat unusual circumstances below described.

## **BACKGROUND**

Variations were sought and approved for 59 Thirty First Street (subject property) in the former Village of Long Branch, now in the City of Toronto (City).

These variations, granted by the Etobicoke and York Panel of the City's Committee of Adjustment (COA), were appealed by the above named Appellant.

As circumstances would have it, the subject property was sold.

The TLAB was advised that the new owners of the subject property no longer wish to pursue the appeal or exercise the permissions envisaged in the approval granted, but subject to appeal.

Counsel for the Appellant on the strength of that understanding, provided in writing by the new owners' solicitor, has requested a disposition of the appeal to the Toronto Local Appeal Body (TLAB) that would allow the appeal and dismiss the variations, without the expense of legal proceedings, attendance and the ensuing costs.

Counsel has invited the TLAB to be 'creative' on both a time and cost related basis.

## **MATTERS IN ISSUE**

Is a Motion required to dispose of the matter, on consent, whether in oral, written or electronic form, or otherwise?

## **JURISDICTION**

The request engages the TLAB in making a determination that is both procedural and substantive.

By its nature, the request does not engage the full panoply of considerations applicable to changes to public documents.

The following jurisdictional considerations are relevant:

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

### ***Rule 2 - APPLICATION OF THE RULES***

Interpretation of these Rules

2.1 The Local Appeal Body is committed to fixed and definite Hearing dates. These Rules shall be interpreted in a manner which facilitates that objective.

2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.

2.3 The Local Appeal Body may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.

2.4 Where any of these Rules or any order issued by the Local Appeal Body conflicts with any statute or regulation, the provisions of the statute or regulation prevail.

#### Matters Not Dealt With by the Rules

2.5 Where procedures are not provided for in these Rules the Local Appeal Body may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

#### Compliance with the Rules

2.9 Substantial compliance with the requirements of these Rules is sufficient.

#### Relief and Exceptions to the Rules

2.10 The Local Appeal Body may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

## **EVIDENCE**

There is no obvious issue of provincial Policy engaged in the request.

The Appellants solicitor has provided correspondence from the new owners counsel that the variances granted by the above noted COA decision are no longer desired. Namely, that the new (current) owner will not defend against the appeal at the October 2, 2018 Hearing.

A request has been made by the Appellants solicitor for an expeditious, cost effective remedy to settle and determine the matter and avoid the time and expense of a proceeding.

The request is made in an effort to protect the interests of the Parties and to protect and aid the public interest in the avoidance of hearing time and facilities employment.

## **ANALYSIS, FINDINGS, REASONS**

There is no Provincial Policy interest and the request is mainly procedural, albeit occurring in the process of an administrative law appeal.

To require and conduct a hearing, including the calling of evidence, where the matters in issue are not in dispute in the circumstance of an agreement to revert to and maintain the status quo, i.e., no changes to the applicable zoning by-laws, seems inefficient and unnecessary.

It is appropriate to exercise the latitude provided in Rule 2 to issue a Decision and Order, in draft, and request the Appellant, through its counsel or otherwise, to advise and provide confirming original advice to the TLAB that each Party is content to the issuance of a Decision and Order that will allow the appeal in its entirety, without costs, and refuse the approval granted by the COA.

Such an order would be on a without prejudice basis to a subsequent application to the COA on the subject property.

I am prepared to exercise jurisdiction under the Rules to effect the request, on terms and conditions. I find an evidentiary proceeding of any form to be unnecessary in the unique circumstances presented.

## **DECISION AND ORDER**

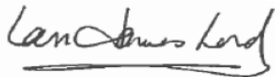
1. This Decision and Order is to be provided to the Parties, specifically to include the current owner of the subject property as distinct from the named Applicant who is understood to be no longer engaged or involved, by the Appellant.
2. The Appellant shall have a period of two weeks next following the date of mailing hereof to achieve an acknowledgement and acceptance, including by e-mail, of the current owner and the Appellant, through counsel or otherwise, to the issuance of this Decision and Order and provide the TLAB evidence thereof, failing which the matter shall continue in accordance with the Notice of Hearing, previously issued.
3. Upon issuance of this Decision and Order by the TLAB the following disposition is effective.
  - a. The appeal is allowed and the decision of the Committee of Adjustment in its case file number above noted is set aside. No costs or refunds are claimed, applicable or allowed.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord**  
**TLAB Case File Number: 18 176208 S45 06 TLAB**

- b. This Decision and Order is without prejudice to a subsequent application to the Committee of Adjustment on the subject property.
  
- c. The Hearing scheduled for October 2, 2018 is removed from the calendar. No further submissions or attendance is required.

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Ian James Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ian Lord