

# REQUEST FOR REVIEW DECISION AND ORDER

**Decision Issue Date**      Monday, October 15, 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): SHOKOOFEH SHAFIEI EBRAHIMI, ZUO WANG

Applicant: ARCA DESIGN INC

Property Address/Description: 30 ALEXIS BLVD

Committee of Adjustment Case File: 18 109371 NNY 10 MV

TLAB Case File Number: **18 141872 S45 10 TLAB**

**Hearing date:**      Thursday, May 31, 2018

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

This is a form of Motion request to the Toronto Local Appeal Body (TLAB) via Forms 7 and 10, including an affidavit of Najia Qadiri (Requestor), sworn October 11, 2018.

It is treated as a Request for Review (Request) of the decision of the TLAB in respect of 30 Alexis Blvd. (subject property).

There is no indication of service on any other Party or Participant.

The communication record of the Applicant is on the TLAB file; the historical background for the Request was not supplied by the Requestor as a part of the Request.

There were no other submissions on the Request.

## **INTRODUCTION**

The Applicant writes October 11, 2018 to request a Motion date to review a Decision issued by Member Makuch on June 21, 2018 (Decision).

The Motion is requested to be treated as a Request for Review under Rule 31 of the TLAB Rules of Practice and Procedure.

The relief requested is to consider a clarification of the Member's Decision in respect of listed variances approved insofar as they do not include the recognition and approval of two variances originally granted by the Committee of Adjustment, but omitted from discrete list approved in the Decision.

## **BACKGROUND**

The Requestor describes a need for clarification as to variance relief under two applicable by-laws in respect of what has been the size authorized for a second storey deck.

There is no dispute that a second storey deck is permitted.

The decision followed a Hearing in which issues related to the proposed deck, among other matters were the subject of evidence.

In listing the variances approved following the Hearing, the Member declined to include the variances sought from the size limitation on second storey decks imposed by both by-laws.

The Requestor's Affidavit attests to the recognition coming to her awareness following the refusal of building permit issuance without the Chief Building Official having first having clarification between the Decision and the plans submitted.

In addition to the Affidavit and Form 7 content, a brief chronology follows:

**June 21, 2018:** Decision issued;

**August 15, 2018:** TLAB Staff advise no relief can be offered from the TLAB Decision;

**August 24, 2018:** second TLAB contact and advice no relief is available; (same): Requestor seeks assistance of Special Assistant to Ward Councillor;

**August 29, 2018:** exchanges between zoning examiners representative, Councillors' Assistant and TLAB. TLAB Supervisor advises of Member consultation and no errors present in the Decision.

**September 4, 2018.** TLAB confirming advice.

**September 20, 2018:** e-mail to TLAB – current request

**October 11, 2018:** formal request with Affidavit attachments to TLAB.

## **MATTERS IN ISSUE**

The Request raises two primary issues:

1. Is the Request eligible to be addressed under the Rule 31?
2. If eligible, what is the appropriate approach to a remedy or remedy under Rule 31?

## **JURISDICTION**

Rule 31 Review Requests and Rule 10 respecting Motions are set out in full on the TLAB website: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

## **EVIDENCE**

The only material supplied on the Request is that contained in the support material (Form 7) to the Affidavit (Form 10).

In addition, the TLAB has a record of correspondence, above referenced.

## **ANALYSIS, FINDINGS, REASONS**

Rule 31 is express on several matters including qualifications for making the request, relevant tests, avenues available for consideration, review grounds and available options to the reviewer for the consideration of relief.

The Requestor fully engaged in an appeal and Hearing wherein the Notice of Hearing had, at the outset, identified the TLAB conducted its affairs under a strict regimen. There is no issue of the lack of awareness of the TLAB Rules of Practice and Procedure.

Following the Decision, a lengthy period ensued wherein the issues raised in the Request were failed to be identified by the Applicant/Requestor.

Well after a month had elapsed, the Requestor began a series of entreaties to seek clarification as to whether the Decision meant what it said in terms of the listed variances approved. While those efforts were made in good faith, to TLAB Staff, the Plans Examiners and the Special Assistant to the Ward Councillor, they were not made with reference to Rule 31.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord  
TLAB Case File Number: 18 141872 S45 10 TLAB**

Rule 31, and indeed the Motion Rule, requires that a Request under Rule 31 be made within 30 days of the Decision and that there be service on the Parties to the Hearing.

The TLAB can afford relief on suitable grounds.

Neither component element was respected.

Understandably, the Requestor sought relief from any other apparent source – other than that established for the purpose. That request come some four(4) months after the Decision, not the 30 days set by Rule 31.

Moreover, while it came be argued that it is only the Requestor that is adversely effected by the delay, that is not necessarily the case. Not only have other interests not been notified but the integrity of the TLAB decision making process is impinged if Requests for Review are allowed without respect to the time frame and obligations of Rule 31.

A convincing case to extend the timeline for filing a Request has not been made out.

Once a request is initiated, others are on Notice to participate where their interests might be affected. Causing this type of uncertainty after quite a lengthy period of acceptance is of concern.

I am also mindful of the fact that although the variances in dispute respecting the size of the deck under both by-laws appears numerically minor, that is one of the very issues litigated before the Member and the subject matter of the Decision.

Finally, I am cognizant of the fact that the issue of the size of the deck and the difference between as-of-right permission and the variances requested was in dispute, but the fact of the permission for a deck is not.

In considering relief under Rule 31, I am directed to consider whether the Request for Relief raises a 'compelling' basis for relief under any one of a number of grounds. The Request for Review does not identify or address these grounds.

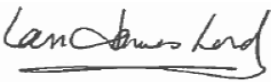
Both procedurally and substantively, I find that the Requestor has not established the basis for the conduct of a Review or one that would warrant, on its merit, the pursuit of any of the options available under the Rule. No compelling basis is demonstrated under the Rule to consider relief further.

I find that a freestanding Motion is unavailable as the TLAB had performed its function of addressing the variances requested, that its Decision is final and binding and that, on that aspect, it is *functus officio*, in terms of further dealing with the matter.

## DECISION AND ORDER

The Request for Review and ancillary Motion is dismissed; the Decision of the TLAB dated June 21, 2018 is confirmed.

This disposition is made without prejudice to the owner to pursue and construct a second storey deck to the size permitted under zoning. Plans presented as part of the Decision are intended to respect the precise wording of the Decision and Order and can be considered to be amended to accord with the express wording of the disposition.

X 

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Ian J. Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord