

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, October 23, 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): TANG CHAU

Applicant: ZERO DEGREE STUDIO INC

Property Address/Description: 394 BRUNSWICK AVE

Committee of Adjustment Case File Number: 18 114371 STE 20 MV

TLAB Case File Number: **18 201802 S45 20 TLAB**

**Motion Hearing date:**      Monday, October 22, 2018

**DECISION DELIVERED BY G. BURTON**

## APPEARANCES

Name	Role	Representative
ZERO DEGREE STUDIO INC	Applicant	
KOUN CHAU	Owner/Party	
TANG CHAU	Appellant	
ROY CHAN	Party	
FRANCO ROMANO	Expert Witness	
SAM RABINOVITCH	Participant	
NEVILLE DASTOOR	Participant	
TINEKE KEESMAAT	Participant	
ERIC HOSKINS	Participant	

MARK CHEETHAM	Participant
SAMANTHA NUTT	Participant
APRIL FRANCO	Participant
MATTHEW MITCHELL	Participant

## **INTRODUCTION**

This is a written Motion brought by Mr. Neville Dastoor, a Participant in the appeal to the Toronto Local Appeal Body (TLAB) by the owners Koun Chau and Tang Chau from a Committee of Adjustment (COA) decision of July 17, 2017 respecting 394 Brunswick Avenue. The COA is had refused certain variances under both By-law 569-2013 and the older By-law 438-86. Mr. Dastoor had previously sought Participant status in the appeal hearing. He now seeks to become a Party instead. This Motion was brought after the required date for such filing, and also after the date for filing required Witness Statements.

## **BACKGROUND**

On August 20, 2018, Mr. Dastoor and Ms. Tineke Keesmaat, neighbours of the appellants residing at 392 Brunswick Avenue, filed in Form 4 their intention to be Participants in the appeal. Mr. Dastoor then filed a joint Participant's Statement together with Ms. Keesmaat. For the reasons provided in his Motion, he would like to take a more active role in the hearing of the appeal by becoming a Party.

## **MATTERS IN ISSUE**

The issue is the fairness to the appellants, given the failure to file a Witness Statement by the date required in the Notice of Hearing. There is also a fairness question if the right to participate in the hearing more completely, by the right to cross examine the appellants' witnesses, is extended to a latecomer who has not fully disclosed their evidence.

## **JURISDICTION**

The TLAB has authority under its Rules of Practice and Procedure to extend the dates required therein, such as for Party status or the filing of materials. Rule 4.4 permits the extension or reduction of a time limit provided by the Rules, upon conditions if necessary. By Rule 4.5 this can occur after the expiration of the required time limit.

## **EVIDENCE**

The TLAB Notice of Hearing for this matter was issued on 1 August 2018. The hearing of the appeal is scheduled for November 6, 2018.

The Notice of Hearing set out the deadlines for filings, including:

- (1) Notice of Intention to be a Party or Participant no later than **August 21, 2018**;
- (2) Witness Statements, Expert Witness Statements and Participant Statements no later than **September 17, 2018**; and
- (3) Last Day to File a Motion no later than **September 24, 2018**.

Eight persons filed notices of intention to be Participants, including Mr. Dastoor and Ms. Keesmaat. No one other than the appellants filed notices of intention to be a Party to the appeal. Mr. Dastoor served and filed his Motion on **October 15, 2018**, with a written motion hearing date of 22 October 2018. He had received no extension of the filing date of August 21 for such a Motion.

The appellants have complied with all deadlines in the Notice of Hearing. As noted in their Response to the motion, the hearing is scheduled for November 6, 2018, and the Notice of Motion was served and filed on October 15, 2018. Thus the Notice of Motion was both served and will be considered within the 30-day Quiet Zone.

Nothing substantive has changed regarding the application that is under appeal since Mr. Dastoor elected Participant status on August 20, 2018, they say. Revised plans and variances were filed on August 16, 2018 and posted on the TLAB file. The appellants stated in their Response that there is no meaningful reason for the requested change in status. The only one given is that Mr. Dastoor seeks to have an “active voice at the panel hearing” at the request of the Annex Residents Association. He is a direct neighbour who shares a driveway with the appellants. Given that his only other request is to read his Participant Statement as a Witness Statement, the appellants argue that it seems that this is the only involvement in the proceeding he wishes to undertake. In fact, they submit, he reaffirmed his Participant status by filing a joint Participant Statement on September 17, 2018. This left the appellants relying on the fact shown on the file that there are no opposing parties. They prepared for the hearing on this basis. To now permit a participant to be a party on the eve of the hearing is unfair.

Mr. Kehar is the present legal representative of the appellants. In the Response to the motion, he argues as well that the TLAB does not or should not assign a different weight to evidence that is provided in the form of a party’s lay witness statement rather than a participant statement. Thus there is no reason to change Mr. Dastoor’s status on this ground.

## **ANALYSIS, FINDINGS, REASONS**

Rule 17.1 of the TLAB Rules provides that:

“No Motion, except a Motion brought under Rule 28 (a request for costs) shall be heard later than 30 Days before the Hearing, unless the Local Appeal Body orders otherwise.” The TLAB has not permitted an extension of time to permit late filing of the motion here. As stated in the appellants’ Response to the Motion, the purpose of this last day for filing of motions is to allow at least a thirty-day ‘Quiet Zone’ immediately in advance of a fixed hearing date.

This period is designed to arrange for all motion, mediation and prehearing conference requests well in advance of the hearing date. In the Quiet Zone, no filings, motions or formal actions are to be brought or taken by the parties or participants. This period is intended for preparation and/or settlement discussions.

Mr. Dastoor's Notice of Motion was not brought in accordance with the deadline set in the Notice of Hearing. It was served and filed outside of the last day for filing of motions, September 24, 2018. Mr. Dastoor did not request permission to file his Motion late.

I agree with the appellants' submission that a motion served and filed within the Quiet Zone should only be permitted in the rarest of circumstances, where compelling circumstances exist, such as a necessary adjournment request. In this instance, no such compelling circumstances exist, according to Mr. Dastoor's Motion. The request by the Annex Residents Association for more active representation in the hearing seems not only unnecessary, but quite prejudicial to the appellants, who have met all of the disclosure rules. It prejudices hearing preparation for the appellants, as argued. It would also give Mr. Dastoor the opportunity to ask questions of the witnesses by cross examination, which is not currently expressly permitted to participants.

There is a shared public interest in ensuring that the filing deadlines in the Notice of Hearing are strictly adhered to. They should not be altered except for compelling reasons. No such reasons have been provided in this Motion.

In my opinion it is not fair to the appellants, at this late stage, that a more detailed Witness Statement was not filed by the date required in the Notice of Hearing. The TLAB Rules call for timely disclosure, simultaneous exchanges of witness/participant statements and the identification of all documents to be relied upon. Adding to this unfairness is the fact of a party's right to participate in the hearing more completely by cross examining the appellants' witnesses and by argument. It is doubly unfair to permit a latecomer who has not fully disclosed their evidence to have full rights as a party.

I am satisfied that Mr. Dastoor will have every right to fully participate within the status initially chosen. Certainly nothing compelling, on the balance of prejudice, was presented in the application for party status that would warrant a change in that status at this late date.

## **DECISION AND ORDER**

The Motion is denied. The status of Mr. Neville Dastoor will remain as Participant in the hearing of this matter on November 6, 2018.

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G. Burton

Panel Chair, Toronto Local Appeal Body