

DECISION AND ORDER

Decision Issue Date Tuesday, October 30, 2018

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

Appellant(s): LAWRENCE MALEK

Applicant: LAWRENCE MALEK

Property Address/Description: 1017 WILSON AVE

Committee of Adjustment Case File: 17 179949 NNY 09 MV

TLAB Case File Number: **17 235422 S45 09 TLAB**

Teleconference date: Wednesday, October 24, 2018

DECISION DELIVERED BY Ian James LORD

REGISTERED PARTIES AND PARTICIPANTS

Name	Role
NORTH YORK MEDICAL BUILDING	Owner
LAWRENCE MALEK	Applicant/Appellant

INTRODUCTION

This is an appeal from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) approving variances in respect of 1017 Wilson Avenue (Subject property).

The appeal file has a somewhat chequered history in that it is the successful Applicant that is the Appellant; the reason behind the Appeal being that the Applicants were not granted all the variances they had requested. There are no Parties involved in the Appeal; however, it is the Applicant that has proved unresponsive to actions needed to advance the matter.

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The Toronto Local Appeal Body (TLAB) has made unsuccessful efforts, detailed below, to keep the appeal file on track.

A teleconference was attempted to achieve a progress update. Service of the 'Notice of Electronic Hearing' occurred October 1, 2018 for a scheduled teleconference at 9:30 am, October 24, 2018. The Notice provided as follows:

"The Toronto Local Appeal Body has set aside 3.5 hours for this electronic hearing **to show cause as to why the matter should not be dismissed and the TLAB file closed.**"

BACKGROUND

The COA decision on this matter was mailed September 7, 2017. By October 13, 2017, the Applicant had appealed advising of the following grounds:

'1. The appellant is not disputing the Committee's decision but the Purpose of the Application for its description had been amended.

The notice of decision as approved was based upon a one and two storey addition to the north and a three storey addition to the east whereas the Committee of Adjustment application documents had been revised and submitted to the planning department to reflect a two storey addition to the north and a four storey addition to the east.

(There was an element of doubt as to whether the Committee appreciated the revisions.)

2. Under Section 45.2.2.(ii) by law 7625, the proposed front yard setback is 1.80 metres in lieu of 4.71 metres.

3. Under Section 45(v) Bylaw 7625, the proposed number of parking spaces was amended in the Committee of Adjustment application and documents to be 91 car parking spaces in lieu of 105 car parking spaces.

3. The appellant is not disputing any of the other decisions made by the Committee.

The appellant is requesting that items 1., 2. and 3. addressed above be noted on record as the variances under the Notice of Decision Minor Variance/ Permission to be approved. '

On October 17, 2017, the TLAB served its Notice of Hearing setting out its roster of prescribed due dates in accordance with its Rules in preparation for a hearing of the appeal set in the Notice for February 23, 2018.

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The February 23, 2018 Hearing was convened but adjourned in the absence of evidence being called. On March 16, 2018, Member Gopikrishna, who had convened the February sitting, wrote the Applicant advising of the need for an evidentiary foundation to consider the requested changes to the COA decision.

Specifically, Member Gopikrishna identified the following for the reconvened Hearing:

“In order for us to complete the hearing with satisfactory evidence, the following documents intended to be referenced must be submitted at least a week before the second hearing:

- An updated Examiners Zoning Notice given that the last notice is dated 2014
- A written outline of how the Appeal evidence respecting how the proposal for 1017 Wilson conforms with the: 1) Provincial Policy Statement (2014) 2) Growth Plan for the Greater Golden Horseshoe (2017) 3) City of Toronto’s Official Plan (2015) 4) Zoning under the City Wide By-Law (569-2013) and Former City of North York By-Law (7625) including any Site Specific Zoning. 5) Relevant statutory tests and 6) An oral presentation that speaks comprehensively to the 5 numbered items above.”

Contact with the TLAB was invited for any questions or clarifications required.

By Notice of Hearing dated March 19, 2018, an adjourned Hearing date to May 7, 2018 was served by the TLAB.

A hearing before the TLAB was held on 7 May, 2018. Mr. Malek attended the meeting. It was at this hearing that the TLAB learned that Mr. Malek did not receive the attachment with the letter from Member Gopikrishna as TLAB staff had inadvertently left out the attachment with the Hearing Notice. Despite this, the need to bring forward oral evidence regarding the variances, notwithstanding a letter written to TLAB by Yaroslav Medwidsky of the COA in March 2018, would be required. Mr. Malek was requested to contact the TLAB Supervisor to find out what he needed to do.

No further contact is recorded as having transpired.

There was no attendance on the teleconference convened October 24, 2018 despite waiting over 15 minutes with the Supervisor and this Member on the line.

MATTERS IN ISSUE

An appeal to the TLAB was duly instituted. However, none of the requisite filings or obligations of the Appellant were met beyond an early attendance and adjournment.

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The Notice of Hearing places disclosure and evidentiary support obligations on an Appellant. The TLAB Rules and a Public Guide describe the scope and content of obligations on an appellant.

None of these directions have been complied with; nor has the Applicant/Appellant responded to any of the efforts by TLAB staff to initiate contact.

The correspondence and oral advice from Member Gopikrishna, both unusual and significant outreach efforts given the alleged public notoriety and alleged support for the project, went ignored.

All efforts at communication have been met with 'radio silence'. No explanation has been afforded. At issue is whether the outstanding TLAB appeal should be allowed to continue.

JURISDICTION

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').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

In addition, as 'master of its own house' in respect of procedural matters, the TLAB has published *Rules of Practice and Procedure*.

EVIDENCE

To date, there is no evidence of activity or interest in support of prosecuting the appeal. As well, despite the extraordinary outreach activity of Member Gopikrishna, there is no evidence in support of the relief requested – the altered variances to the approval of the COA.

It is contrary to public policy to have appeals left unresolved.

ANALYSIS, FINDINGS, REASONS

The TLAB *Rules* contemplate a 'just, fair and expeditious' treatment of matters before it. Indeed, given the extensive and detailed Notice, including content on the anatomy of a TLAB proceeding, Parties and Participants have an early roadmap not only as to the dates of their engagement, but also their responsibilities in respect of each.

And TLAB has, as a service to the citizens of the City, undertaken to provide timely Decisions and Orders as best befits the circumstances of an appeal. The *Rules* constitute a regimen that Parties and Participants can employ to achieve results.

In most circumstances, these results and the disposition of appeals are posted in approximately 120 days, from the date of the appeal perfection to the delivery of a Decision and Order.

The subject appeal has consumed three (3) times the timeline of that service delivery objective with no prospect of its advancement. It is unique as the only engaged party is the Applicant /Appellant who has neither shown the courtesy of a response to entreaties nor acknowledged abandonment of the appeal.

This is a circumstance that should no longer be allowed to languish as the business of the TLAB need not be constrained by efforts to include participation where none is apparent.

In the circumstances, it appears 'just, fair and expeditious' to dispose of the appeal, without prejudice to the Appellant to pursue further relief by way of re-application to the COA or otherwise as felt appropriate.

DECISION AND ORDER

The variance appeal in this matter, above, regarding the subject property is dismissed for want of prosecution. The decision of the COA is final and binding.

The Supervisor is to advise the Secretary Treasurer of the COA accordingly.

The TLAB file is closed.

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord