

DECISION AND ORDER

Decision Issue Date **Monday, November 19, 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): XIU JUAN ZHU

Applicant: LEI ZHANG

Property Address/Description: 1129 HUNTINGWOOD DR

Committee of Adjustment Case File Number: 18 119433 ESC 41 CO, 18 119443 ESC 41 MV, 18 119448 ESC 41 MV

TLAB Case File Number: **18 190777 S53 41 TLAB, 18 190778 S45 41 TLAB, 18 190779 S45 41 TLAB**

Hearing date: Thursday, November 08, 2018

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Lei Zhang	Applicant/Participant	
Xiu Juan Zhu	Appellant/Owner	
City of Toronto Abimbola	Party	Nathan Muscat/Aderinsola
Balendran Nadarajah	Participant	
Adrian Emmanuel	Participant	
John Selvarajah	Participant	
Bruna Nigro	Expert Witness	

INTRODUCTION

These are appeals by the applicant from decisions refusing a consent and nine variances for one of the lots to be created (Part 1) and five variances for the other lot proposed to be created (Part 2).

BACKGROUND

The applicant was represented by Lei Zhang, who wished to be an advocate and expert witness for the appellant. No one else was present to represent the applicant or give evidence on her behalf. The applicant was present but could not speak English.

At the hearing, Mr. Lei Zhang functioned as an advocate and did not seek to be qualified as a witness. His resume did not qualify him to give planning opinion evidence. He did not address the merits of the appeal as City brought a motion at the commencement of the hearing for a dismissal of the appeals on the grounds: that the applicant had failed to file an expert witness statement, and document disclosure; that Mr. Lei Zhang could not function both as a witness and advocate in this proceeding; and that there was no expert witness to give evidence on behalf of the applicant.

Mr. Lei Zhang, functioning as an advocate and not under oath, argued that he was relying on material filed with the Committee of Adjustment as the disclosure documents and witness statement and stated that he attempted to file certain material which TLAB staff had failed to input.

An examination of the TLAB file demonstrated that Mr. Lei Zhang had not attempted to file as he stated. Moreover, his statement that a certain document had been filed with the Committee of Adjustment was untrue. Finally his assertion that he had a DVD which showed improper treatment of him in presenting his case at the Committee of Adjustment was not demonstrated when the DVD was played.

MATTERS IN ISSUE

The only matter in issue was whether the appeals should be dismissed without a hearing on the merits.

JURISDICTION

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').

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.

EVIDENCE

There was no sworn evidence heard; only argument by the City Solicitor and Mr. Lei Zhang. It was clear from the documents filed and presented that there was no TLAB evidence to support Mr. Lei Zhang assertions and the evidence he submitted did not support his argument. As a result I can only conclude: that there was a failure to comply with the TLAB Rules; that there was a need to call Mr. Lei Zhang as an expert witness after he acted as an advocate, and had not filed a witness statement; and that Mr. Lei Zhang, on the basis of his filed resume, was not qualified to give expert opinion evidence.

ANALYSIS, FINDINGS, REASONS

I can only conclude from the argument and documents filed that Mr. Lei Zhuang was not a forthright and honest advocate. On this ground alone I am able to dismiss the appeal on the grounds of failure to properly disclose and file. However, I need not rely on breach of the TLAB Rules. It has been held in the case of *Staal v. Toronto City Committee of Adjustment* [2005] O.M.B.D. No.1120 that a person cannot be an advocate and a witness before and in the same proceeding before the OMB

I find that I should apply this finding in this proceeding as the role Mr. Lei Zhuang is playing and the evidence he attempted to give is unreliable and confused. Moreover, in this proceeding there is no one qualified to give expert opinion evidence on the part of the applicant. Yet the applicant must meet the requirements set out respecting provincial documents as well as the requirements under the Planning Act and cannot, in this proceeding, do so without expert opinion evidence. There is, therefore no basis upon which the consent and variances can be approved,

DECISION AND ORDER

The appeals are dismissed and the decision of the Committee of Adjustment affirmed.

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S. Makuch
Panel Chair, Toronto Local Appeal