

DECISION AND ORDER

Decision Issue Date Thursday, November 08, 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): ELIZABETH NEJASMIC

Applicant: DESIGN PLAN SERVICES INC

Property Address/Description: 6 WILKET RD

Committee of Adjustment Case File Number: 17 158050 NNY 25 CO (B0037/17NY), 17 158058 NNY 25 MV (A0492/17NY), 17 158056 NNY 25 MV (A0491/17NY)

TLAB Case File Number: 18 217056 S53 25 TLAB, 18 217006 S45 25 TLAB, 18 217000 S45 25 TLAB

Written Hearing date: Friday, November 09, 2018

DECISION DELIVERED BY D. LOMBARDI

INTRODUCTION

This is a decision in response to a Written Motion by the Appellant (Elizabeth Nejasmic) for an adjournment of the hearing of the above referenced matter and a further order setting two new consecutive hearing dates any time after February 15, 2019.

BACKGROUND

The Hearing Date for this matter was set for January 23, 2019, and the Motion was for an adjournment due to the fact that the Appellant, Ms. Nejasmic, and her husband, Jozo Nejasmic, are both scheduled to be away on the assigned Hearing Date and unable to attend.

JURISDICTION AND MATTERS IN ISSUE

Pursuant to the Toronto Local Appeal Body (TLAB) Rules of Practice and Procedures (Rules) and, particularly, Rules 2.10, 4.4, 4.5, 17 and 23, the hearing can be adjourned and a new hearing date set.

In deciding whether to grant an adjournment pursuant to Rule 23.3, the TLAB may consider, among other things:

- a) *The reason for an adjournment;*
- b) *The interests of the other Parties in having a full and fair Proceeding;*
- c) *The integrity of the TLAB's process;*
- d) *The timeliness of an adjournment;*
- e) *The position of the other Parties on the request;*
- f) *Whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;*
- g) *The effect an adjournment may have on Parties, Participants or other Persons;*
- h) *The effect an adjournment may have on the ability of the TLAB to conduct a Proceeding on a just, timely and cost effective manner.*

The availability of parties is an issue of procedural fairness and natural justice that the TLAB must take into consideration. In this instance, the Appellant has requested an adjournment of the scheduled Hearing due to being unavailable on the scheduled hearing date.

The issue is whether to adjourn the original hearing date and to reschedule the hearing within the timeline requested by the Appellant. In addition, I must determine whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others and the effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost effective manner.

EVIDENCE

On October 25, 2018, the Appellant filed a Notice of Motion (Form 7) with the TLAB requesting an order:

1. That the Motion be held by Written Hearing as opposed to an Oral Hearing pursuant to Rule 17.4 of the TLAB's Rules ; and
2. Adjourning the within Hearing from January 23, 2019 to a consecutive two day block of time to be scheduled from the middle of February 2019 onwards pursuant to Rule 23.4 (b) of the TLAB Rules .

The Notice of Motion, filed by the Appellant's solicitor, Steven Ferri, confirmed that Ms. Nejasmic is the owner of the subject property at 6 Wilket Road and that she is also

the applicant/ appellant with respect to the within matter. It also confirmed that Ms. Nejasmic and her husband are scheduled to be away on the assigned hearing date of January 29, 2019.

A supporting Affidavit (Form 10) was filed on behalf of Mr. Nejasmic on the same date in support of the written Motion for adjournment brought by the Appellant, confirming that he has been authorized to provide instructions to their solicitor, Mr. Ferri, on behalf of his wife with respect to the within appeal.

The Affidavit confirms that both he and the Appellant will be away on the scheduled hearing date and, therefore, will be unavailable to attend the hearing or to provide instructions to their solicitor in the event the hearing was to proceed on the scheduled date.

The Notice of Motion confirms that along with the City of Toronto (City), two other persons, Marilyn Walton and Rami Younes, have filed a Notice of Intention to be a Party (Form 4) with respect to this matter. Both those Parties are represented by the same counsel, Brad Teichman.

In providing grounds for an adjournment and a subsequent rescheduling of the Hearing, the Appellant's solicitor outlines in the Notice of Motion that it is the Appellant's understanding that the City intends to call at least one and potentially two witnesses in the hearing based on the issues raised. In addition, the other Parties, Ms., Walton and Mr. Younes, will together be calling one witness. The Appellant will also be calling at least one witness, in support of the appeal.

Based on the anticipated roster of parties and potential witnesses expected to participate in this hearing, it is the Appellant's position that it will be impossible to complete the hearing in the allotted one day sitting. Further, if only one day is allocated by the TLAB and the hearing is not completed as scheduled, the Appellant further argued that this would require the hearing to be bifurcated and for the Parties to return at a later date to complete the sitting.

The grounds supporting the Motion question the integrity of the TLAB's hearing process if this were to happen and whether the integrity of the hearing process could be compromised if, indeed, it were to be bifurcated as anticipated. The Appellant argued that allowing witnesses additional, and for some Parties, unequal time in between sittings would be prejudicial and unfair.

Conversely, allowing the adjournment to be completed in a single consecutive block of dates will allow the TLAB to conduct the hearing in the most just, fair, timely and cost effective manner possible.

ANALYSIS, FINDINGS, REASONS

Pursuant to the TLAB's Practice Direction No. 2, where a Party requests an adjournment of a Hearing Date, the TLAB will treat and require the request to be conducted as a Written Motion.

TLAB Rule 23.1 provides that Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise. In addition, TLAB Rule 23.3 provides matters to be considered in deciding whether or not to grant an adjournment.

The Appellant and her husband will be unavailable to attend on the scheduled hearing date of January 23, 2019. As well, the Appellant's husband, Mr. Nejasmic, who has been authorized to provide instructions to their solicitor, Mr. Ferri, with respect to this appeal will also be unable to do so on the Hearing date.

The TLAB must consider the reasons for the adjournment and the interests of the Parties in having a full and fair Proceeding. In addition, it must consider the timeliness of the adjournment and whether an adjournment will cause or contribute to any existing or potential harm or prejudice to the other Parties.

On November 1, 2018, the City filed a Notice of Response to Motion (Form 8) with the TLAB consenting to the relief being sought by the Appellant. The City agreed to adjourning the hearing of the above appeals originally scheduled for January 23, 2019 and rescheduling the Hearing to a consecutive two day block of time from the middle of February 2019 onwards.

The City also requested that the TLAB canvas availability with the City solicitors before selecting a date for the adjournment requested by the Moving Party (Appellant).

Brad Teichman (Overland LLP), the solicitor for Marilyn Walton and Rami Younes, also filed a Notice of Response to Motion (Form 8) with the TLAB, and corresponding Affidavit, on behalf of the Parties on November 1, 2018. In that Notice, Mr. Teichman confirmed that his clients consented to the Appellant's Motion being heard by Written Hearing and to the adjournment of the scheduled Hearing of January 23, 2019 to a consecutive two day block of time from mid-February onward

He further requested that the TLAB consult his clients prior to fixing a new hearing date to ensure that the Parties and their expert planning witness are available.

In addition, Mr. Teichman requested an Order that the TLAB appoint the same Member as chairperson to preside at both the hearing of the appeal for 4 Wilket Road (TLAB File #'s 18 215889 S53 25; 18 315883 S45 25; and 18 215888 S45 25) and the hearing for 6 Wilket Road.

Decision of Toronto Local Appeal Body Panel Member: D. Lombardi
TLAB Case File Number: 18 217056 S53 25 TLAB
18 217006 S45 25 TLAB
18 217000 S45 25 TLAB

The grounds supporting this request are found in the Notice of Response to Motion and the Affidavit of Gregory Smith, a land use planner employed by Overland LLP, filed with the Notice. Mr. Smith confirmed that both Ms. Walton and Mr. Younes are respondents to the appeals pending before the TLAB concerning 4 Wilket Road and 6 Wilket Road (the Properties).

He established that the appeal regarding 4 Wilket Road is a parallel proceeding before the TLAB with many of the same persons involved, as in the subject property appeals. The Applications for consent and minor variances for 4 Wilket Road and 6 Wilket Road are identical in all material respects.

Mr. Smith advised that the owner of 6 Wilket Road also appealed the refusal of the Application for 4 Wilket Road to the TLAB, and counsel for the owner of 6 Wilket Road has advised that he will be participating in the hearing of the appeals concerning 4 Wilket Road.

The TLAB has scheduled the hearing of the appeals concerning 6 Wilket Road for January 23, 2019, although the owner has requested an adjournment of such hearing to at least mid-February. As well, the TLAB has scheduled the hearing of the appeals concerning 4 Wilket Road for January 29, 2019, and that owner has similarly requested an adjournment of such hearing to February 5 and 6, 2019.

Based on the documents filed, and the understanding that this request is being dealt with as a discrete request made on consent, the TLAB will agree to an adjournment as requested by the Appellant. I agree with the Appellant's proposition that adjourning and rescheduling the hearing to the next available hearing dates after the middle of February 2019 will allow the Appellant to receive a full and fair proceeding and allow her solicitor to effectively represent her interests before the TLAB.

Given that the interval between the scheduled hearing date and the new requested time line for hearing dates does not represent a significant delay, I find that allowing the adjournment, and agreeing to the suggested window for new hearing dates will facilitate a hearing process which is just, expeditious and cost effective.

I also agree that, in light of the number of Parties and witnesses anticipated to be participating in the hearing as highlighted by the Appellant, scheduling two (2) consecutive hearing dates would be the most practical and efficient way to complete the appeal.

Finally, I agree with Mr. Teichman's request that the same Member preside at both the hearing of the individual appeals for 4 Wilket Road and 6 Wilket Road as this will ensure a consistent assessment of the relevant facts and a coherent application of the relevant policies to those facts. Appointing the same Member as chairperson for each will also assist in achieving a more efficient use of the TLAB's resources and is a

reasonable approach requested by Mr. Teichman done so for no other or improper purpose.

Counsel for the owner of 6 Wilket Road and counsel for the City do not oppose this request. The City, in a Notice of Reply to Response to Motion (Form 9) filed on November 5, 2019, supported the relief requested by Mr. Teichman (at paragraph 4 of his Response to Motion) that the same Member preside as chairperson at both the appeals for 4 Wilket Road and the hearing for 6 Wilket Road.

Mr. Teichman advised that counsel for the owner of 4 Wilket Road, although invited to, has not taken a position on the request for the same chairperson for both hearings. At the time of the Order, no response had been received by the TLAB in this regard from either counsel or the owner of 4 Wilket Road.

The TLAB appreciates the co-operation demonstrated to achieve consent on these matters.

DECISION AND ORDER

The request for a Written Motion is allowed and the Motion for Adjournment is granted. TLAB staff is requested to canvas the Parties for two (2) new consecutive hearing dates after February 15, 2019.

The TLAB staff is requested to issue and post a new Notice of Hearing (Form 2) that reflects the new Hearing Dates once they are set.

The filing dates for submissions in accordance with the TLAB Rules as outlined in the Notice of Decision dated September 24, 2018, remain the same.

The Hearing event for the subject property scheduled for January 23, 2019 is cancelled and no attendance is necessary. A Notice to that effect is to be posted on the TLAB Website.

The TLAB staff is requested to investigate the possibility of assigning the same Member as chairperson to hear the appeals for 4 Wilket Road and 6 Wilket Road on their respective rescheduled dates, if feasible and if Member and TLAB scheduling permits.

The undersigned Member is not seized for the hearing in order to facilitate timely rescheduling.

Decision of Toronto Local Appeal Body Panel Member: D. Lombardi

TLAB Case File Number: 18 217056 S53 25 TLAB

18 217006 S45 25 TLAB

18 217000 S45 25 TLAB

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D. Lombardi

Panel Chair, Toronto Local Appeal Body