

DECISION AND ORDER

Decision Issue Date Friday, December 21, 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): YEN PING LEUNG

Applicant: KEVIN CHENG

Property Address/Description: 787 DUNDAS ST W

Committee of Adjustment Case File Number: 17 255982 STE 19 MV (A1198/17TEY)

TLAB Case File Number: 18 213028 S45 19 TLAB

Hearing date: Tuesday, December 11, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Ms. Yin Pin Leung	Appellant	Mr. Kevin Cheng
Mr. John Provart	Party	
Ms. Andrea Kronos	Participant	

INTRODUCTION AND BACKGROUND

The hearing held on 11 December, 2018, was a follow up to the Decision issued by me on 6 December, 2018, on the Motion filed by the Appellant, which I heard in writing. In the interests of brevity, I will not repeat any of the contents or my conclusions, other directing the reader to my Decision issued on 6 December, 2018. This Decision defined questions which were to be addressed by the Parties at the hearing; these questions are recited in the "Matters in Issue" Section.

MATTERS IN ISSUE

The questions, which my Decision directed the Appellant and Opposition to provide answers at the hearing scheduled on 11 December, 2018, were as follows:

- Understanding the nexus between Laneway suites, hotels, and their applicability to Section 45(1) of the Planning Act, and timelines
- Understanding the scope of the Mediation to be facilitated by Councillors Layton's office
- Any extraordinary reasons for completing the Hearing in writing
- Discussion about timelines, given the aforementioned issues for discussion
- Mr. Yoon's availability, and the question of replacing him with another Expert Witness, if he can't become available in a reasonable period of time
- An explanation of Mediation under the TLAB Rules, identification of Potential Parties for Mediation, followed by next steps if Mediation succeeds, or does not succeed

JURISDICTION

The Toronto Local Appeal Body's Rules (the Rules) were relied upon by way of jurisdiction.

EVIDENCE

Mr. Kevin Cheng, Agent for the Appellant, represented himself and his mother, Ms. Leung, the Appellant. Both Mr. John Provart, a Party, and Ms. Andrea Krones, a Participant , represented themselves.

Mr. Cheng made a presentation which provided his family's perspective on the proposal, and why they had appealed the refusal of their proposal by the Committee of Adjustment (COA) to the Toronto Local Appeal Body (TLAB). He discussed how his family was interested in the rejuvenation of Dundas St. West, and wanted to convert the existing building into a hotel, or a laneway suite, depending on the release of guidelines by the City of Toronto.

In response to the questions asked in my Decision dated 6 December, 2018, Mr. Chen said that there was a nexus between Laneway suites and the mandate of the TLAB because Laneway Suites are comparable to Secondary Suites in homes, which can be approved under Section 45(1) of the Planning Act.

Mr. Cheng and his family wanted the intervention of Counselor Cressy's office to address a number of issues raised by the residents living in the neighbourhood, many of which are beyond the mandate of the TLAB. (By way of editorial comment, it emerged at the hearing that Councilor Cressy was the new municipal councilor for the ward containing 787 Dundas St West, as a result of the new municipal ward boundaries.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
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While Mr. Cheng's preference was for the hearing to be held in writing, he wanted, at the very least, that his family's expert witness, Mr. Yoon, be cross examined only in writing, because the latter was convalescing from surgery. When asked when the surgery had taken place, and when Mr. Yoon would recover enough to be able to participate fully in the TLAB hearing, Mr. Cheng said that the surgery was completed in September 2018, and that he was not sure of when Mr. Yoon would recover such that he could provide evidence in person, before the TLAB. When asked if Mr. Yoon was a planner, Mr. Cheng explained that Mr. Yoon had trained to be an engineer, and had represented parties at Committee of Adjustment hearings. Mr. Cheng was unsure if Mr. Yoon was a Registered Planner, or belonged to any other professional body of planners.

Mr. Cheng reiterated that the lack of predictability about Mr. Yoon's availability, was the basis of the request for the hearing to be held by way of writing. However, Mr. Cheng said that he hoped that one of Mr. Yoon's juniors could attend the Settlement conference to be facilitated by Councilor Cressy's office.

In terms of deadlines, Mr. Cheng said that they wanted to explore the prospect of Settlement on a number of issues (including, but not limited to planning) with their neighbours, and submit Plans for the Laneway Suites to the City of Toronto in the 2nd quarter of 2019, before the commencement of the next hearing before the TLAB. He suggested that the TLAB Appeal could be continued in December, 2019.

Mr. Provart said that the deadlines proposed by Mr. Cheng were unrealistic, and that the Appellant should either "prosecute his case, or withdraw the Appeal". Mr. Provart said that he would retain his right to cross examine the Expert Witness in person, and added that he wanted to cross examine Mr. Cheng, as well as the Appellant, Ms. Leung, when the hearing would be held.

I then explained the TLAB mediation methodology to the Parties, and emphasized the fact that the mediation would be restricted to the planning issues before the TLAB. Both Parties declined to participate in the TLAB facilitated mediation, but reiterated that they would be interested in a mediation facilitated by the local Municipal Councilor, because of the fulsome spectrum of topics that could be covered under such mediation.

In response to Mr. Provart's intention to cross examine Ms. Leung, Mr. Cheng said that his mother "did not speak English". When asked if he could interpret for his mother, Mr. Cheng's response was that he didn't speak Chinese well enough to interpret. I asked Mr. Cheng to explain the public interest in granting his request for an adjournment *sine die*, to which he had no clear answer.

I instructed Mr. Cheng that he was being provided with a deadline of the 1st of February, 2019, to report about progress made in contacting Councilor Cressy's office about the requested mediation, as well as the status of the mediation, with an emphasis on when TLAB could resume hearing the Appeal. I said that if no progress had been made by 1 February, 2019, or the proposed hearing date was not consistent with TLAB's stated aim of adhering to fixed hearing dates, and completing hearings in a timely and

meaningful fashion, we would have to schedule a hearing through the assignation of a peremptory hearing date.

I explained that a hearing date of December, 2019, was unrealistic, and that an adjournment *sine die*, was not possible given the circumstances of the Appeal. On the issue of linking the hearing to the availability of their Expert Witness, I pointed out that Mr. Yoon had not submitted an Expert Witness Statement, and since Mr. Cheng was open to the idea of one of Mr. Yoon's colleagues representing his family at the Settlement conference, it was evident to me that the case could proceed without Mr. Yoon's involvement, if necessary. I advised Mr. Cheng that he consider the option of substituting his Expert Witness with a different individual, in case Mr. Yoon could not participate on the day of the peremptory hearing date.

The hearing adjourned with my reminding Mr. Cheng to be proactive, vigorously pursue the settlement offer with Councilor Cressy's office, and provide an update to the TLAB by 4:30 PM on 1 February, 2019.

ANALYSIS, FINDINGS, REASONS

As stated in the TLAB's Rules, the TLAB is committed to fixed hearing dates, and completing hearings as efficiently as possible, within a reasonable period of time. Notwithstanding how "monumental" the changes may be to the City of Toronto's Laneway suites guidelines, there is no stated deadline by which these guidelines will be released. Notwithstanding Mr. Cheng's assertions about a nexus between the Laneway Suites and Section 45(1) of the Planning Act, the evidence provided was not sufficient to persuade me about a demonstrable nexus. While I have not reached a conclusion about the nexus, I am prepared to complete the hearing on the basis of the variances submitted to the COA, and subsequently appealed to the TLAB, if necessary.

Mr. Yoon had not submitted an Expert Witness Statement as of the day of the hearing; there is consequently no prejudice caused to any Party should he be substituted by a different Expert Witness. It is important that the Appeal proceed to completion irrespective of Mr. Yoon's ability, or availability, to testify in person. Should Mr. Yoon participate, he will have to provide oral evidence, since I did not hear any compelling evidence from Mr. Cheng about why Mr. Yoon should be excepted from the accepted practice of providing evidence in person. As stated in my earlier Decision of 6 December, 2018, there are many witnesses who have provided evidence in TLAB proceedings, notwithstanding a hearing impairment or other medical issues. An Expert Witness' providing evidence in person, and being cross examined by Parties, is consistent with the Rules of, and the practices, followed by the TLAB.

Given that the TLAB encourages settlement, and the fact that Mr. Provart did not oppose the idea of a settlement facilitated by the local municipal councilor, I allowed Mr. Cheng to pursue a settlement request with Councilor Cressy's office. However, he was instructed to contact the TLAB by 4:30 PM on 1 February, 2019, and provide an update


on whether the settlement had started, the extent of progress made towards a resolution, and when the Parties could return to the TLAB to complete the hearing. As stated at the hearing, I wish to reiterate that the TLAB can impose a peremptory hearing date, should adequate progress not be made in terms of the settlement process. Should the hearing be contested, Mr. Cheng is expected to prepare such that the hearing can be completed without Mr. Yoon's participation, for the reasons discussed earlier in this Decision.

Lastly, I wish to emphasize that a written Decision is being issued to underscore the importance of adhering to a time-sensitive adjudication process, and its completion, irrespective of the participation of a given witness, or witnesses.

DECISION AND ORDER

1. The Appellant has until **4:30 PM on 1 February, 2019**, to report back to the TLAB about the extent of the progress made with the Settlement process, and when the TLAB hearing can be completed, should the settlement be under way.
2. The TLAB will determine when to hear the Appeal, after it receives an update from the Appellant about the progress in the Settlement process, as directed above. The TLAB may issue a peremptory hearing date on which the Appeal will be heard orally, as a contested proceeding if necessary, irrespective of the availability of any specific witness, or witnesses.

So orders the Toronto Local Appeal Body.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body