

DECISION AND ORDER

Decision Issue Date Friday, February 15, 2019

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): TARESA CONSTRUCTION INC

Applicant: TARESA CONSTRUCTION INC

Property Address/Description: 64 EMPRESS AVE

Committee of Adjustment Case File Number: 18 198245 NNY 23 MV (A0556/18NY)

TLAB Case File Number: 18 236323 S45 23 TLAB

Hearing date: Wednesday, February 06, 2019

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

Appellant	Taresa Construction Inc
Appellant's Legal Rep.	Seta Boyadjian
Party	City of Toronto
Party's Legal Rep.	Matthew Schuman and Roman Ivanov
Expert Witness	Victoria Fusz

INTRODUCTION AND BACKGROUND

Anjuman Ara Shahid and Nafeez Sarafat Chaudhary are the owners of 64 Empress Avenue, situated in the Willowdale community of the former City of North York. They applied to the Committee of Adjustment (COA), requesting for approval of several variances, to construct a new dwelling at 64 Empress Ave.. The COA heard the application on September 13, 2018, and approved all the requested variances, with the exception of the permitted lot coverage, which was modified and approved, and the west side yard setback ,which was refused. The Appellants then applied to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on 6 February, 2019.

The City of Toronto elected to be a Party on 14 November, 2018, and introduced a written Motion on 9 Jan, 2019, to dismiss the Appeal. On 31 January, 2019, Patrick Bakos and Nick Dimitropoulos, both lawyers at Friedman Law Professional Corporation, brought forward a Motion on behalf of the Appellants, requesting an adjournment of the case to 11 June, 2019, in order to help their clients find an expert witness, to testify at the hearing. The Appellants' Motion requesting an adjournment, was supported by emails from the City's solicitors.

MATTERS IN ISSUE

The two matters before the Tribunal on 6 February, 2019, are:

- 1) Should the TLAB dismiss the Appeal, as requested by the City in its Motion dated 9 Jan, 2019?
- 2) Should the TLAB adjourn the case to 11 June, 2019, as requested by the Appellants in their Motion dated 31 January, 2019?

JURISDICTION

The Motions are to be ruled upon based on the TLAB's Rules of Practice and Procedure (the "Rules").

EVIDENCE

In its Motion dated 9 January, 2019, the City asked that the Appeal be dismissed because the Appellant had not filed any submissions in support of their Appeal, by 9 January, 2019, well after the deadlines for submission of documents (per TLAB's Rules) had elapsed. This behavior was contrasted with the City's adherence to timelines and Rules in terms of submitting documents. The City's Motion expressed concerns about what they perceived to be "asymmetric disclosure" and stated that "*The Appellant has benefited from, as of today's date, thirty-seven days of preparation time for the hearing. The City has no disclosure of the evidence, opinion, or rationale that will be presented to the TLAB with respect to the Planning Act tests for minor variance*". The City's Motion urged the TLAB to not admit any submissions, or allow the Appellants to call any witnesses, because they had not adhered to the deadlines, effectively dismissing the Appeal.

In their Motion, dated 31 January, 2019, Counsel for Appellants stated that they had been retained in November 2018, and had met with the City's lawyers for the purposes of a settlement discussion on 23 January, 2019. However, since the discussions did not result in a Settlement, Counsel for Appellants requested an adjournment in order to find an expert witness, to assist with the Appeal. They pointed out that no planner was available to represent them on 6 February, 2019, and requested an adjournment to 11

June, 2019. The Appellants' submissions included emails from the City supporting the request for an adjournment to 11 June, 2019.

At the TLAB hearing held on the morning of 6 February, 2019, the City was represented by Mathew Schuman, and Roman Ivanov, both of whom are lawyers, and Victoria Fusz, a planner. The Appellants were represented by Seta Boyadjian, lawyer with Freidman Professional Corporation

Ms. Boyadjian recited the reasons stated in the Appellants' submission as the basis for requesting an adjournment, and emphasized that there would be no prejudice to the City if the Motion were granted, since the latter had supported the request for adjournment. Responding for the City, Mr. Ivanov said that the City was prepared to withdraw their Motion regarding dismissal of the Appeal, and confirmed that they were in support of the adjournment.

However, Mr. Romanov also stressed the fact that the Appellants had not submitted any Witness Statement as of 6 February, 2019, but had had access to the City's Witness Statement since it had been submitted according to the deadlines. Mr. Romanov asked that the TLAB's Decision also require that the Expert Witness testifying for the Appellants, to submit his or her statement as soon as possible, but no later than 13 May, 2019, in accordance with the TLAB's Rule about submission of documents no later than 30 days before the hearing. Lastly, he asked that the Expert Witness for the Appellants prepare their statement based on their independent research, and analysis, without reference to the City's submission.

Ms. Boyadjian did not object to any of the conditions requested by the City. I explained to the Parties that I was prepared to grant the adjournment because the Parties had no ostensible concern about prejudice. However, I also drew Ms. Boyadjian's attention to the Appellants' commencing the search for an expert witness only after the Settlement discussions had failed, and expressed concern about how this impacted their ability to proceed to a hearing on the day assigned by the TLAB to hear the Appeal. I suggested that it may have been possible to adhere to the hearing date if the Appellants had retained an expert witness as soon as they retained counsel. I explained that granting adjournments to enable one Party to retain an expert witness, did not result in the best possible use of the TLAB's resources, notwithstanding agreement among Parties about the adjournment. I concluded the hearing by stating that the date of 11 June, 2019 was peremptory; I would proceed with the hearing on 11 June, 2019, even if an expert witness could not be found to testify for the Appellants.

I then adjourned the hearing, and stated that I would follow up with a written Decision, reflecting the discussions and conclusions of the hearing held on 6 February, 2019.

ANALYSIS, FINDINGS, REASONS

The original Motion filed by the City on 9 January, 2019, asking for the Appeal to be dismissed, is neither analyzed nor ruled upon in this Decision, because it was withdrawn by the City's solicitors at the hearing. The City's support for the adjournment

is interpreted that there is no prejudice if the Appellants' Motion for adjournment were granted.

It is in the interests of natural justice for any Party, and the Appellants, in particular, to retain an expert witness, in the interests of a fulsome discussion on the planning aspects of the case, and an informed and thoughtful decision from the adjudicator. Given this reason and the aforementioned support for the Motion from the City, I granted the request for an adjournment.

However, I feel compelled to repeat my admonishment to the Appellants for requesting an adjournment because they had not found an expert witness. I believe that the Appellants could have simultaneously handled the tasks of looking for an expert witness, and conducting the settlement discussions, instead of handling the two tasks in series, as is evident from their submissions. I believe that the probability of our commencing the hearing on 6 February, 2019, would have been significantly higher, if the Appellants had retained an expert witness earlier in the process and consequently provided witness statements and oral evidence, as per schedule. This scenario may have precluded the need for the City's introducing a Motion to dismiss the Appeal, as well as enable the TLAB to process Appeals efficiently. Adjournments don't result in the optimal utilization of the TLAB's resources, including space, staffing and adjudicators' availability.

I therefore urge all Parties to assist actively in a timely processing of Appeals by adhering to the TLAB's Rules concerning the filing of witness statements.

I am in agreement with the City's observations about the need for the Appellants' witness to file an expert witness as soon as possible, and by the 13th of May, 2019, at the very latest, in order to abide by the TLAB's Rules regarding disclosure. While self-explanatory, it may also be emphasized that the witness would have to base the statement on their independent work, observations and research, without reference to submissions made by the City's expert witness. The final Decision, stated below, reflects these requests made by the City, and agreed to by Counsel for the Appellants.

DECISION AND ORDER

1. The Appeal respecting 64 Empress Ave. is adjourned to the 11th of June, 2019. The new hearing date is considered peremptory.
2. The Appellants are required to instruct their witness to make submissions on the basis of his or her own research, observations and work, without reference to the statement submitted by the City.
3. The Appellants' submissions and statements have to be completed by the 13th of May, 2019, in order to comply with the TLAB's Rules. Submissions prior to this date, where possible, would be appreciated.

So orders the Toronto Local Appeal Body

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', written over a light grey rectangular background.

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body