

DECISION AND ORDER

Decision Issue Date Thursday, March 29, 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): MANUEL FERRAZ

Applicant: MANUEL FERRAZ

Property Address/Description: 119 PLAYFAIR AVE

Committee of Adjustment Case File Number: 18 203311 NNY 15 MV

TLAB Case File Number: 18 244637 S45 15 TLAB

Last submission date: Tuesday, March 26, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
Maria Ferraz	Owner	
Manuel Ferraz	Appellant	Amber Stewart
Franco Romano	Expert Witness	

INTRODUCTION

This is a decision on a written Motion by the Appellant, Manuel Ferraz, for a request to grant a written hearing to determine the application and appeal based on the written record and on related matters arising after the issuance of a Notice of Hearing.

In the alternative, the Appellant is requesting the adjournment of the scheduled Hearing for March 26, 2019, and scheduling an attendance by telephone conference to address any questions of the TLAB Member hearing the matter.

BACKGROUND

The Appellant applied to the Committee of Adjustment (COA) in 2015 in respect of a minor variance application to permit the construction of a new two-storey dwelling with a detached garage at 119 Playfair Avenue (subject property). The application was partially approved by the COA, but certain variances were refused.

The Appellant appealed to the (then) Ontario Municipal Board (OMB) and in a decision dated September 11, 2015, the OMB approved the application subject to conditions. The Appellant has since obtained building permits from the City of Toronto (City) and substantially completed construction of the new dwelling and rear garage.

Certain aspects of the as-built construction are inconsistent with the approved building permits. As such, the Appellant submitted a minor variance application to the COA to facilitate the maintenance, recognition and retention of the revisions as built, including to legalize and maintain the existing front and rear deck.

A total of 12 variances to Zoning By-law 7625 (former By-law) and Zoning By-law 569-2013 (new By-law) were considered by the COA.

On September 26, 2018, the COA refused the minor variance application and the Appellant appealed the decision to the Toronto Local Appeal Body (TLAB). The TLAB set a Hearing Date of March 26, 2019, to hear the appeal.

The TLAB issued a Notice of Hearing (Form 2) on November 14, 2018, setting out a number of deadlines:

- *Applicant Disclosure* – **November 29, 2018;**
- *Notice of Intention to be a Party or Participant* – **December 4, 2018;**
- *Document Disclosure* – **December 14, 2018;**
- *Witness, Expert Witness and Participant Statements* – **December 31, 2018;**
- *Notice of Motion* – **February 11, 2019.**

The TLAB had received no additional Notices of Intention to be a Party or Participant to this matter by the requisite due date noted above.

On February 20, 2019, however, the TLAB received an email from Michael Presutti, MEP Design Inc., on behalf of the owners of 121 Playfair Avenue, the neighbours immediately to the west of the subject property. In that email, Mr. Presutti advised that he was representing the owners of 121 Playfair Avenue and noted that he had provided a deputation at the September 26, 2018 COA Hearing on behalf of the abutting neighbours, in opposition to the application.

He further advised that the owners had only recently been informed of the appeal application filed with the TLAB and the forthcoming Hearing on March 26th, indirectly by another neighbour. He therefore submitted that the City had erred in failing to properly

inform the owners or their representative (Mr. Presutti) of the appeal despite having been identified as interested parties at the COA Hearing.

By way of his email, Mr. Presutti requested that the scheduled TLAB Hearing regarding the subject property be postponed to a later date to allow the owners of 121 Playfair Avenue adequate time to seek professional consultation in order to review the application and documents before the TLAB. Additionally, he requested an adjournment to allow his clients the opportunity to formally request 'Party' status at the March 26, 2019 Hearing.

As the presiding Member, I directed TLAB staff to advise Mr. Presutti, via email, of the policy direction provided by the TLAB Chair dealing with the issue of election of status after the expiry of the time set out by the TLAB's Rules of Practice and Procedure (Rules), in a Notice of Hearing for such election and after the delivery of any Witness Statements.

"Where a person requests Party or Participant status after expiry of the due date set out in the Rules and after the delivery of any Witness Statement, whether or not the person participated before the initial decision of the COA, no rights, privileges or obligations shall be afforded or extended to such individuals in respect of the proceedings before the TLAB."

This was done by an email from TLAB staff addressed to Mr. Presutti and dated February 27, 2019.

In that email, Mr. Presutti was further advised that the Hearing, generally, is public and open for attendance by the individual. Further, the Member presiding would deal with the request as a preliminary matter prior to the commencement of the Hearing. He was also advised that the Member may or may not, at his or her discretion, on request admit an oral statement by the individual(s), and admit documentary submissions made by the individual(s) into the record only with the leave of the Member conducting the Hearing.

On March 25, 2019, the day before the scheduled Hearing of this matter, the TLAB received a Notice of Motion (Form 7) from Amber Stewart, Amber Stewart Law, on behalf of the Appellant. That Notice included an Affidavit (Form 10) from Franco Romano, the Appellant's Expert Witness, in support of the Notice of Motion, based on the relief noted under 'Introduction', above.

JURISDICTION AND MATTERS IN ISSUE

There are a number of questions I must address as part of this Motion request. Has the Motion been properly brought? Should the TLAB grant the request for a Written Hearing to determine the application based on the written record? Alternatively, should the scheduled Hearing for March 26, 2019 be adjourned and should the TLAB schedule an attendance by telephone conference to address any questions of the TLAB Chair

hearing this matter, or otherwise arising? Should the owner of 121 Playfair Avenue be permitted to provide an oral statement at the Hearing and be permitted to submit documentary materials into the record? Should the Hearing be adjourned and is the matter suitable to be accommodated as a written Hearing?

In addressing this Motion, I will rely on the TLAB's Rules 23 – *Adjournments* and 24 – *Hearings* and, particularly, Rules 23.2, 23.3, 23.4, 24.1 and 24.6.

More specifically:

Rule 24.1

The Local Appeal Body may hold an Oral Hearing, Electronic Hearing or a Written Hearing.

Rule 24.6

The Local Appeal Body may consider any relevant factors in deciding to hold a Written Hearing, including:

- a) The convenience to the Parties and the Local Appeal Body;
- b) The likelihood of the process being less costly, faster and more efficient;
- c) Whether it is a fair and accessible process for the Parties;
- d) The desirability or necessity of public participation in or public access to the Local Appeal Body's process;
- e) Whether the evidence or legal issues are suitable for a Written Hearing;
- f) Whether credibility may be an issue or the extent to which facts are in dispute;
or
- g) Whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

EVIDENCE

On the day of the Hearing, neither Mr. Presutti nor his clients, the owners of 121 Playfair Avenue, attended. No materials were filed with the TLAB in advance of the Hearing on their behalf other than the aforementioned email and no reason has been provided as to why they failed to attend the Hearing. As a result, I must conclude that Mr. Presutti and his clients do not intend to pursue status at the Hearing or to participate in the proceedings.

Ms. Stewart filed a Notice of Motion on March 25, 2019, outlining the grounds for the TLAB granting a written hearing to determine the subject application or, in the alternative, adjourning the scheduled Hearing and scheduling an attendance by teleconference should the presiding TLAB Member have any questions or require further elaboration on any matters contained in the filed submissions.

In addition to the Notice of Motion, Ms. Stewart filed an affidavit from Mr. Romano outlining the reasons in support of the request in the Motion. Mr. Romano is the planning consultant retained by the Appellant and was also the planning consultant for the first application submitted to the COA in 2015 for the subject property.

Ms. Stewart advised that he is scheduled to be in another TLAB hearing on March 26, 2019, and is not available to attend the scheduled Hearing date. There are numerous other parties and participants in that matter and the Hearing has been relocated from the TLAB offices to accommodate their attendance.

The Affidavit explains that he was retained on that matter on October 19, 2018, and on this matter shortly thereafter. The Notices of Hearings for the two matters were issued within 10 days of one another, and both Hearings were scheduled for March 26, 2019.

When questioned as to why the Notice of Motion was filed the day before the Hearing and not earlier as required by the TLAB Rules, Ms. Stewart noted that both the Notice of Motion and the Affidavit were dated January 11, 2019. She submitted that it was an error on the part of her office that the submissions were not filed by the February 11, 2019 due date and she accepted full responsibility for the oversight.

Ms. Stewart argued that, as set out in Mr. Romano's Affidavit, and as suggested by the absence of any other parties or participants at the Hearing, no other persons, parties or City departments have expressed any concerns with the application that is currently before the TLAB. As such, she submitted that it should proceed as a Written Hearing and be determined on the basis of the written record.

ANALYSIS, FINDINGS, REASONS

The TLAB may conduct hearings orally, electronically or in writing, pursuant to TLAB Rule 24.1. I concur with Ms. Stewart that a hearing in writing would provide the most efficient use of the TLAB's and the Party's resources, and is appropriate given the circumstances.

I accept that it would be a fair and accessible process for the Appellant, who is at the time of this Order the only party to the proceeding. I agree with Ms. Stewart that there is no desirability or requirement for public participation in the process.

The issues, given their uncontentious nature, are suitable for a written hearing given that Mr. Romano, the only expert witness retained by the Appellant, has filed a detailed Expert Witness Statement setting out the nature of the application, the reasons for the minor variance application, and the circumstances regarding the divergence from the first approved minor variance application.

Mr. Romano, in his Witness Statement, confirmed that no one has expressed any concerns with this application, including the City Planning and Urban Forestry

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Departments, the local Councillor, and area residents. As a result, I concur that there will be no prejudice caused to any party or participant if a written hearing is held.

I agree with Ms. Stewart that given the totality of the record and the fact that there is no evidence in opposition to the application, it would be appropriate for this matter to be determined on the written record.

DECISION AND ORDER

The Motion for a Written Hearing to determine the application based on the written record is granted. TLAB staff is directed to issue a Notice of a Teleconference Hearing for this matter and post the Notice on the TLAB website.

The Notice is to specify that the affidavit evidence to date is sufficient but that the affiant must be present for the teleconference. Any additional submissions must be received by the TLAB and the Applicant/Appellant not less than ten (10) days prior to the teleconference.

In addition, TLAB staff is to canvass the Appellant's representative and expert witness and secure possible times and dates for attendance by telephone conference with the presiding TLAB Member.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body