

DECISION AND ORDER

Decision Issue Date Tuesday, April 02, 2019

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")

Applicant(s): HONGYU ZHANG

Applicant: GOLDBERG GROUP

Property Address/Description: 37 WILKET RD

Committee of Adjustment Case File Number: 18 139777 NNY 25 CO, 18 139770 NNY 25 MV

TLAB Case File Number: 18 243170 S53 25 TLAB, 18 243167 S45 25 TLAB

Last submission date: Friday, March 15, 2019

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

INTRODUCTION

1. This is a motion in writing filed by the Applicant, Hongyu Zhang, the owner of the property located at 37 Wilket Road (subject property). This motion was considered on March 29, 2019.
2. The Applicant's application for consent and minor variances with respect to the subject property was refused by the Committee of Adjustments (COA). The Applicant appealed the COA's decisions to the Toronto Local Appeal Body (TLAB). A hearing is scheduled for June 27, 2019 and June 28, 2019.

MATTERS IN ISSUE

3. The Applicant requests the following:
 - a. An Order granting the Applicant relief from TLAB Rule 16.2 to permit revised architectural drawings to be filed into evidence.

- b. An Order to hear the Motion in writing without oral argument pursuant to TLAB Rule 17.4.
4. The Applicant has revised architectural drawings that the Applicant wishes to file after the 30-day deadline set by the TLAB, as per Rule 16.2 (noted below).
5. In the Notice of Motion, the Applicant states that they will withdraw their appeal of the minor variance application, as a request for approval of minor variances is no longer needed.

JURISDICTION

6. The relevant rules as set out in the TLAB's Rules of Practice and Procedure are the following:

Relief and Exceptions to the Rules

2.10 The Local Appeal Body may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

Disclosure of Documents

16.2 Parties shall serve on all Parties a copy of every Document or relevant portions of public Documents they intend to rely on or produce in the Hearing and File same with the Local Appeal Body not later than 30 Days after a Notice of Hearing is served.

16.3 Where a Party fails to disclose Documents in accordance with Rule 16.2 the Local Appeal Body may disallow the Document to be entered in evidence and may make such other orders as it deems appropriate in the circumstances.

Local Appeal Body may Require Motions to be in Writing or Electronically

17.4 The Local Appeal Body may require a Motion to be held by Written Hearing or by Electronic Hearing upon such terms as the Local Appeal Body directs.

EVIDENCE

7. Mr. Michael Goldberg, a Registered Professional Planner, filed an affidavit dated March 14, 2019 on behalf of the Applicant. The affidavit includes revised architectural drawings prepared by Richard Wengle Architect Inc., dated February 11, 2019 (Revised Plans), which is an exhibit to the affidavit (Exhibit A).

8. In his affidavit, Mr. Goldberg states that the Applicant further revised the architectural plans following the submission of the Applicant's Disclosure on November 29, 2018 and in response to concerns expressed by the opposing parties and the participants. Based on the revised architectural plans, Mr. Goldberg indicates that it is his belief that there are no longer any minor variances required to be approved by the TLAB. Mr. Goldberg states that the consent application to sever the subject property remains the same.
9. The City of Toronto (City) filed a Notice of Response to Motion consenting to the motion to be in writing without oral argument and confirmed that the City did not object to the filing of the Revised Plans.
10. No other responses to the motion were filed.

ANALYSIS, FINDINGS, REASONS

11. As noted in the Notice of Hearing for this appeal and as required by Rule 16.2, the Applicant is required to file disclosure by December 14, 2018.
12. If Mr. Goldberg is accurate in stating that the TLAB will not need to approve any minor variances because of the Revised Plans, then the appeal related to the approval for minor variances at the hearing will be a moot issue.
13. In my view, it is beneficial for all parties and participants that the Revised Plans are allowed to be filed immediately, even though the deadline for document disclosure has passed. The Revised Plans may assist the parties and the participants to further evaluate their objections and their positions with respect to the issues at appeal at the TLAB hearing. The parties and participants will have more than two months to review the Revised Plans as the hearing is scheduled for June 27, 2019 and June 28, 2019. I do not see how the filing of the Revised Plans after the deadline would prejudice or disadvantage the other parties or participants.
14. I note that Rule 16.2 does not require that document disclosure be served on the participants. However, I am of the opinion that the participants would benefit from reviewing Revised Plans. As such, the participants should be notified about the Revised Plans once they are filed.
15. Pursuant to Rule 2.10, I am prepared to grant an exception to Rule 16.2 and allow the Applicant to file the Revised Plans with the TLAB, provided that the Applicant files the Revised Plan by April 10, 2019 and notifies all parties and participants once the Revised Plans have been filed with the TLAB (by April 10, 2019).

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16. The request that this motion be in writing without oral arguments, pursuant to Rule 17.4, is granted.
17. The Applicant shall file with the TLAB and serve on the parties, the Revised Plans, which are attached to Mr. Goldberg's affidavit as Exhibit A, by April 10, 2019.
18. The Applicant shall notify all participants immediately of the Revised Plans once they are filed with the TLAB.

X 

Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body