

DECISION AND ORDER

Decision Issue Date Thursday, April 18, 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): ABIOLA NOSIRU, CITY OF TORONTO

Applicant: MICHAEL FLYNN

Property Address/Description: 1745 ALBION RD

Committee of Adjustment Case File: 18 222102 WET 01 MV

TLAB Case File Number: 18 255818 S45 01 TLAB

Last Submission Date: Monday, March 18, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

INTRODUCTION AND BACKGROUND

2146137 ONTARIO INC is the owner of 1745 Albion Ave., located in the Ward of Etobicoke North in the Municipality of the City of Toronto. The owners applied to the Committee of Adjustment (COA) for variances to construct a hotel, above the existing banquet hall at the southwest corner of the property. On October 25, 2018, the Etobicoke York Panel of the COA reviewed the application and approved the variances. Ms. Abiola Nosiru, the owner of 1780 Albion Ave., and the City of Toronto (City) appealed the COA's Decision to the TLAB on November 13, 2018 and November 14, 2018, respectively. In other words, there are two different Appeals on the same property; the TLAB scheduled a hearing that was due to commence on April 25, 2019.

The purpose of this Decision is to respond to the Motion put forward by the City on March 11, 2019, to adjourn the Appeal respecting 1745 Albion Ave. The City's Motion states that the Motion is on consent of all three Parties, and requests that the hearing be converted to a five-day hearing, within a consecutive five day block.

MATTERS IN ISSUE

The requests before the TLAB are:

- (a) An Order of the Toronto Local Appeal Body ("TLAB") pursuant to Rule 17.4 of the TLAB Rules of Practice and Procedure, that this motion be held by Written Hearing
- (b) To adjourn the hearing date in this matter to five (5) consecutive dates to be determined by the Toronto Local Appeal Body ("TLAB");
- (c) Pursuant to TLAB Rule 2.10, relief from the requirement for an affidavit as set out in Rule 17.5(e) as the matter is on consent of all the parties; and
- (d) Such further relief as counsel may advise and the TLAB may grant.

JURISDICTION

The TLAB relies on the Rules of Practice and Procedure (the "Rules") to determine Administrative matters. The Motion specifically relies on Rules 2.10, 17.4, 17.5(e), 23.2 , 24.1, 24.6 and 23.4.

EVIDENCE

The Submissions include a Form 7 (Notice of Motion), accompanied by a brief explanation of why the relief is sought. The Moving Party argues that a signed affidavit is not required because the Motion is brought forward on the consent of all Parties, and requests for relief from the Rules on the need to submit an affidavit.

The explanation accompanying the Notice of Motion, signed by Michael Mahoney, a lawyer with the City, dated March 11, 2019 , notes that Parties had filed expert witness statements on January 24 and 25, 2019, as well as on February 1, 2019. It also notes that the Parties have communicated with each other regarding the "large volume of expected expert witness correspondence that will be entered at the hearing".

Given that each Party will be calling at least one expert witness to give evidence at the hearing on multiple contested issues, and that corresponding time allotments will be needed to cross examine expert witnesses, the City asserts that "parties agree on consent that the hearing should be heard over multiple consecutive days", and asks that the Appeal be heard over 5 consecutive days. The submission claims that "the relief sought will enable the TLAB to adjudicate the proceedings in a just, expeditious, and cost-effective manner, and will not cause undue delay in the determination of the Appeal."

Secondly, the City requests that the Motion for adjournment be heard in writing pursuant to Rule 17.4 of the TLAB Rules and the TLAB's Practice Direction 2. It asserts that the request to hear this motion in writing is the most just, expeditious and cost- effective manner of assessing this Motion. The material related to the Motion was forwarded to me on March 28, 2019.

On or around March 28, 2019, I was also made aware of emails from representatives of the Parties asking for the result of the Motion put forward by the City ; it was my

understanding that the representatives had agreed to, or wanted to consider taking up other commitments on April 25, 2019.

After reviewing the file, I requested the staff to inform the Parties that counsel for the Parties had to attend on April 25, 2019, though the witnesses were excused from appearing before the TLAB on that date. I also indicated that a written Decision would be released later.

ANALYSIS, FINDINGS, REASONS

It is important to address the issue of hearing the Motion in writing first, as well as the requested relief from the requirement to submit an Affidavit.

The Motion to hear the writing is on consent of all Parties, and relies on Practice Direction 2 of the TLAB, as well as Rule 17.4. Rule 17.4 requires submissions of a Motion one month before the hearing, while Practice Direction 2 allows Parties to file a Motion a week in advance of the hearing. Since the Motion is on consent and is within the time provisions of Practice Direction 2, I concur that the Motion can be heard in writing- in other words, Components (a) and (c) of the Relief sought by the Moving Parties, as listed in the "Matters in Issue" section, is granted.

The relief sought in the form of an adjournment from the existing date of April 25, 2019, is addressed herewith. While I appreciate that counsel for each Party needs to review submissions from the two other Parties, and that multiple expert witnesses will give evidence, there is no explanation of the reasoning linking the numbers of witnesses to a five-day hearing. I note the interesting conclusion in the Moving Party's assertion of prejudice if the matter were heard over one day (*"If the matter proceeds to scheduled one-day hearing on April 25, 2019, prejudice to the parties will result from subsequent hearing dates likely being scheduled months later"*). While the TLAB may have granted one day of hearing time to this Appeal at the outset, the hearing is by no means restricted to one day, and a continuation would have been granted, where necessary. There is no explanation of how "subsequent hearing dates likely scheduled months later" amounts to prejudice.

Prima facie, the affidavit does not provide adequate reasoning for the requested relief for five-day consecutive hearing dates to be granted.

The explanation also asserts that the "relief sought will enable the TLAB to adjudicate the proceedings in a just, expeditious, and cost-effective manner, and will not cause undue delay in the determination of the Appeal". I fail to understand how granting the Motion is to TLAB's advantage, based on what I believe to be, essentially an assertion.

I would have refused the second component of requested relief completely, and proceed to a full hearing on 25 April, 2019, but for the following reasons:

- Given that some of the Parties were contemplating other commitments on April 25, 2019, assuming that the hearing would be adjourned, I am not sure if the witnesses would be available to provide evidence before the TLAB.

- I am unclear about the meaning of the phrase “will be entered at the hearing” in the sentence “*Counsel for the City, the Appellant Abiola Nosiru and the Applicant have been in communication regarding the large volume of expected expert witness evidence that will be entered at the hearing*”. I am not sure if the phrase refers to witness statements, or additional statements, to be introduced at the beginning of the hearing, which could potentially result in an adjournment being granted.

I have therefore decided to err on the side of caution, and exempt the witnesses from appearing before the TLAB on April 25, 2019. However, I would like to meet with the lawyers for the Parties to achieve the following objectives:

- a) Receive an update on the status of Witness Statements, with specific reference to completeness of the documentation.
- b) Understand the numbers of expected witnesses, and the reasoning behind the need for a five-day hearing
- c) Determine the consequences to the Parties if the hearing cannot be held in a continuous block of five days.
- d) Determine whether the Parties open to TLAB facilitated Mediation and possible Settlement?

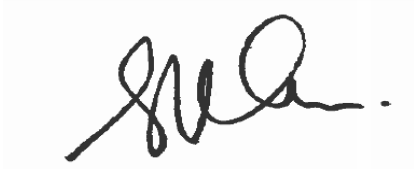
In conclusion, the requested relief for hearing the Motion in writing about adjourning the Hearing scheduled for April 25, 2019, is granted in part, because the Motion has been heard in writing, and the relief from the need to include an affidavit is granted. While the witnesses are excused from appearing before the TLAB on April 25, 2019, the lawyers for the Parties are required to appear at 9:30 AM on April 25, 2019, at the TLAB to answer the questions listed above.

DECISION AND ORDER

- 1) The requested relief for hearing the Motion about adjourning the date from 25 April, 2019, is granted in part. The Motion has been heard in writing, and relief has been granted from the Rule for the submission of an accompanying affidavit.
- 2) The Witnesses are excused from appearing before the TLAB on 25 April, 2019. The lawyers for the Parties are required to appear, and discuss the following:
 - a) An update on Witness Statements, with specific reference to completeness of the documentation.
 - b) The numbers of expected witnesses, and the reasoning behind the need for a five-day hearing
 - c) The prejudice to the Parties if the hearing can't proceed in a continuous block of five days.
 - d) Are the parties open to a TLAB facilitated Mediation and possible Settlement?

So orders the Toronto Local Appeal Body.

X

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

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body