

# DECISION AND ORDER

**Decision Issue Date**      Monday, May 13, 2019

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), and section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Paul Accadia

Applicant: Van Elslander and Associates Architects

Property Address/Description: 77 Thirty Fifth Street

Committee of Adjustment Case File Numbers: 18 249037 WET 06 CO (B0084/18EYK), 18 249038 WET 06 MV (A0789/18EYK), 18 249039 WET 06 MV (A0788/18EYK)

**TLAB Case File Numbers: 19 119639 S53 03 TLAB, 19 119640 S45 03 TLAB, 19 119641 S45 03 TLAB**

**Motion Hearing date:**      Wednesday, May 01, 2019

**DECISION DELIVERED BY JUSTIN LEUNG**

## APPEARANCES

<b>Name</b>	<b>Role</b>	<b>Representative</b>
Van Elslander & Associates Architects	Applicant	
Kelsey Morrison	Owner	
Scott Morrison	Primary Owner/Party	Jason Park of Devine Park LLP
Paul Accadia	Appellant	
Don Morrison	Party	Jason Park of Devine Park LLP

**Decision of Toronto Local Appeal Body Panel Member: J. LEUNG**  
**TLAB Case File Numbers: 19 119639 S53 03 TLAB, 19 119640 S45 03 TLAB,**  
**19 119641 S45 03 TLAB**

Long Branch Neighbourhood Assoc.	Party
Ruth Grier	Participant
Lola Marcocchio	Participant
Zbigniew Blasczyk	Participant
Anna Blaszczyk	Participant
Jenny Ribeiro	Participant
Daryle Moffatt	Participant
Alexander Donald	Participant
Elaine Billio	Participant
Roberta Jordan	Participant
Robert Davis	Participant
Mary Mccoll	Participant
Ruth Weiner	Participant
Mark Koczij	Participant
Deitre Courchesne	Participant
Michael Kohn	Participant
Tanya Norman	Participant
Debbie Nolan	Participant
Veronik Cleary	Participant
Donna Donald	Participant
Eduardo Pereira	Participant
Stephanie Chris	Participant
Jim Mosher	Participant
Kathy Santaana	Participant
Sheila Carmichael	Participant
Carla Ursini	Participant

**Decision of Toronto Local Appeal Body Panel Member: J. LEUNG**  
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Steven Vella	Participant
Irina Lipskaya	Participant
Chau Duong	Participant
George Nikou	Participant
Heather Koczij	Participant
Matthew Cleary	Participant
Mary Peckitt	Participant
Phillip Schumacher	Participant
Dorothy-Anna Orser	Participant
John Macdonald	Participant
Anton Braic	Participant
Denise Hebert	Participant
Deardree Hogan	Participant
Elaine Elue	Participant
Heather Lebeau	Participant
John Cheung	Participant
Julia Jordan Ray	Participant
Josee Quenneville	Participant
Joyce Wheller	Participant
Kevin Biss	Participant
Kateryna Husband	Participant
Lisa Cormier	Participant
Elizabeth Edwards	Participant
Laurel Fynes	Participant
Susan Willsher	Participant
Theresa Cook	Participant

Christine Mercado	Participant
Charlotte Sheasby-Coleman	Participant

## **INTRODUCTION**

This decision is in relation to a requested motion for adjournment as petitioned by the appellant Paul Accadia for the above-noted matter, dated May 1, 2019. The appellant contends that they have a witness, described by the appellant as imperative to their appeal, who is unable to attend the initially scheduled hearing dates of July 9 and 10, 2019. If an adjournment were granted, new hearing dates would need to be scheduled for these related consent and minor variance applications appeals.

## **MATTERS IN ISSUE**

The applicant's legal counsel, Jason Park of Devine Park LLP, representing the owner Scott Morrison and party Don Morrison, has submitted a 'Notice of Reply to Motion' in relation to this requested adjournment. They argue that this requested motion should not be entertained as the identity and rationale for the introduction of this expert witness was not sufficiently explained. Mr. Park contends that the filing of the motion documents was not done in accordance with the Toronto Local Appeal Body (TLAB) *Rules of Practice and Procedure*. He further argues that the protraction of this appeal process has brought undue hardship for his client.

The appellant, Paul Accadia, states that the witness he intends to introduce is Christine Mercado of the Long Branch Neighbourhood Association (LBNA). With regards to the statement made by the appellant's legal counsel that this appeal process has been further delayed which has contributed to financial difficulties for his client, Mr. Accadia states that the planning process involves several legal procedures which must be observed. He further comments that the applicant should have been aware of this prior to their submission of their related consent and minor variance applications for consideration by the Etobicoke York Committee of Adjustment (COA).

## **JURISDICTION**

Rule 23 of the Toronto Local Appeal Body *Rules of Practice and Procedure* prescribes direction in considering adjournments; it reads as follows:

### **23. ADJOURNMENTS**

#### **Hearing Dates Fixed**

23.1 Proceedings will take place on the date set by the Local Appeal Body and provided in the Notice of Hearing, unless the Local Appeal Body orders otherwise. Request for Adjournment must be on Motion.

23.2 A Party shall bring a Motion to seek an adjournment. Considerations in Granting Adjournment.

23.3 In deciding whether or not to grant a Motion for an adjournment the Local Appeal Body may, among other things, consider:

- a) the reasons for an adjournment;
- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the Local Appeal Body's process;
- d) the timeliness of an adjournment;
- e) the position of the other Parties on the request;
- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
- g) the effect an adjournment may have on Parties, Participants or other Persons; and
- h) the effect an adjournment may have on the ability of the Local Appeal Body to conduct a Proceeding in a just, timely and cost effective manner.

### **Powers of the Local Appeal Body upon Adjournment Motion**

23.4 On a Motion for adjournment the Local Appeal Body may:

- a) grant the Motion;
- b) grant the Motion and fix a new date, or where appropriate, the Local Appeal Body may schedule a prehearing on the status of the matter;
- c) grant a shorter adjournment than requested;
- d) deny the Motion;
- e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;
- f) grant an indefinite adjournment if the request is made by a Party and is accepted by the Local Appeal Body as reasonable and the Local Appeal Body finds no substantial prejudice to the other Parties or to the Local Appeal Body. In this case the Moving Party must make a request that the Hearing be rescheduled or the Local Appeal Body may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;
- g) convert the scheduled date to a Mediation or prehearing conference; or
- h) make any other appropriate order including an order for costs.

## **ANALYSIS, FINDINGS, REASONS**

In considering this request, it is imperative that the previously submitted appeal documents also be reviewed. As part of the appeal filed, it is noted that Christine Mercado had submitted an 'Election Participant Status', Form. This establishes her role as an interested Participant in these proceedings. Moreover, a 'Document Disclosure' was also submitted by Ms. Mercado which included several documents related to this appeal. With this information, it could be found that Ms. Mercado should be aware of the duties and responsibilities conferred on an interested Participant and the need to participate within the established parameters and Rules of the TLAB.

While a Party or Participant may subsequently discover that they are unable to attend a hearing due to conflicting schedules, the TLAB attempts to accommodate most

members of the public when possible. However, this may not always be an achievable target. For example, while Toronto holds its COA meetings during the day, other municipalities such as Vaughan and Burlington hold their meetings in the evening. In this instance, each individual municipality in question has made their own decision on what time during the day to hold their meeting based on operational and public needs. In balancing these needs, an attempt is made to equitably address all competing interests as they relate to the planning process. However, invariably, not all circumstances can always be accommodated in the manner intended. Such are the elements which planners, ratepayer associations and other relevant actors must contend with while participating in the planning process.

I have reviewed the materials provided by the appellant. While Mr. Accadia states that the participation of Ms. Mercado is central to the presentation of his appeal in opposition to the approved consent and minor variance applications, the subsequent documents provided do not seem to outline any professional credentials and relevant experience of any legal, planning, forestry, engineering, architectural or construction background which could act to substantially influence the request. While Mr. Accadia contends that Ms. Mercado's assistance would be irreplaceable for him in his participation at the TLAB, it should be noted that the LBNA is comprised of several individuals who are experienced in TLAB matters. This was expressed in a letter submitted to TLAB, dated April 6, 2018, entitled 'TLAB Deputation-Comments from the Long Branch Neighbourhood Association'<sup>1</sup>, where the author Ms. Mercado outlines that a Board of Directors has been appointed for the LBNA and that they, as a collective group, have several years' experience appearing and participating with the COA and have also recently commenced participation with the TLAB. Mr. Accadia could, in theory, request assistance from other members of LBNA with the TLAB process. In further review of the appeal materials, there is a comprehensive set of documents and submissions provided by Mr. Accadia. Moreover, Mr. Accadia intends to introduce several expert witnesses to support his appeal. It should be noted that of the 2 witness experts identified by the LBNA and Mr. Accadia, Ms. Mercado is not part of this list.

Furthermore, subject to the Rules, relevant professionals such as a planning consultant could be retained for expert testimony. Ultimately, participation in the TLAB process requires all Parties and Participants to familiarize themselves with the procedures and practices to best accommodate and expedite the dispute resolution process. This acts to ensure the efficient operation of the TLAB and to not create unnecessary delays in the panel's delivery of services to the public.

In the motion documents as filed by Mr. Accadia, he comments that the possibly prolonged legal processes which can occur at the TLAB are part of the planning and appeal process and that the applicant should have been aware of this prior to submitting their original consent and minor variance applications. It must be noted that for any Party which submits planning applications, the *Planning Act* contemplates that there will be deadlines to be observed in the delivery of decisions relating to their applications. As such, while the appellant could intend to put forward a comprehensive appeal to the

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<sup>1</sup> Long Branch Neighbourhood Association (2018, April 6). TLAB Deputation: Comments from the Long Branch Neighbourhood Association. Retrieved from [https://www.toronto.ca/wp-content/uploads/2018/04/8e79-LBNA\\_TLAB-deputation.pdf](https://www.toronto.ca/wp-content/uploads/2018/04/8e79-LBNA_TLAB-deputation.pdf)

TLAB, the panel itself must be able to deliver planning decisions in a responsive, cohesive and timely manner.

I do not find the request for adjournment compelling because, based on *prima facie* review, appears that Mr. Accadia has composed a comprehensive and detailed appeal which is supported by several witnesses and documentation. These submissions demonstrate that he has taken considerable time and effort to prepare for this upcoming appeal hearing and should be sufficiently prepared to present his case to the TLAB. The absence of one witness, in comparison to the significant appeal materials which he would be using, would not adversely compromise his ability to participate fully in the TLAB hearing.

## **DECISION AND ORDER**

This request for adjournment is denied and the hearings set for Tuesday, July 9, 2019 and Wednesday, July 10, 2019 can proceed as originally scheduled.

**X**



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Justin Leung  
Panel Chair, Toronto Local Appeal Body