

DECISION AND ORDER

Decision Issue Date Tuesday, May 07, 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): DIXIL PROPERTIES INC

Applicant: DOMUS ARCHITECTS

Property Address/Description: 1982 ISLINGTON AVE

Committee of Adjustment Case File Number: 17 265659 WET 04 MV (A0994/17EYK),
17 265553 WET 04 MV (A0993/17EYK)

TLAB Case File Number: 18 131764 S45 04 TLAB

Teleconference date: Wednesday, April 17, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
DOMUS ARCHITECTS	APPLICANT	
DIXIL PROPERTIES INC	APPELLANT/OWNER	JOEL FARBER
MUSTAFA MASTER	PARTY (TLAB)	
BRIARCREST MANOR	PARTY (TLAB)	KELLY OKSENBERG
CITY OF TORONTO	PARTY (TLAB)	ELLEN PENNER

INTRODUCTION AND BACKGROUND

Dixil Properties is the owner of the property at 1982 Islington Ave, located in the Municipal Ward of Etobicoke Centre in the City of Toronto. The Committee of Adjustment(COA) refused Dixil Properties' application for variances to construct a four

storey building, as well as a six storey building at 1982 Islington Ave. on April 8, 2018. The Applicants appealed the COA decision to the Toronto Local Appeal Body (TLAB) on May 5, 2018. The City of Toronto and Briarcrest Manor (an Apartment Complex in the vicinity of the Subject property) elected for Party Status.

The hearing commenced on December 17, 2018- at the outset, I was informed that the Appellants had settled with Briarcrest Manor, and that the latter would not be calling any witnesses. While the Appellants' submissions stated they would be calling on Mr. Adam Litavski as an Expert Witness in the area of land use planning, the City's submissions stated that two witnesses, Ms. Vanessa Covello as an Expert Witness in the area of land use planning, and Ms. Kristen Flood, as an Expert Witness on Heritage matters, would be giving evidence.

During the course of the hearing, Mr. Farber, Counsel for Appellants, said that he would summons Mr. Mark Rapus, a Senior Planner with the Toronto Region Conservation Authority (TRCA), specializing in environmental planning, whose expert witness statement was part of the City's submission. On the hearing held on December 17, 2018, Mr. Litavski finished giving evidence, after which Ms. Covello, was sworn in, and made a few introductory remarks, before adjournment. At the end of the hearing, the Parties agreed that they would need at least two more days for completing the hearing.

During the course of my efforts to identify suitable dates in February 2019, I was informed that the Ms. Covello would be proceeding on parental leave, and that the City needed more time to identify a planning witness to substitute for Ms. Covello. In the month of March 2019, the City informed the TLAB that Mr. Tony Lieu would substitute for Ms. Covello; however, the City also provided various dates on which Mr. Lieu would not be available. Given that the presence of three Parties is required, and restrictions on the availability of some witnesses, I became very concerned with the projected timelines to complete the hearing. I therefore asked for a teleconference to have a discussion with the Parties, to identify peremptory dates.

The TLAB facilitated a teleconference on the afternoon of April 17, 2019.

MATTERS IN ISSUE

The Matters to be resolved through the teleconference before the TLAB are:

- Updates from the Parties, where appropriate
- Identification of peremptory dates to continue with the hearing respecting 1982 Islington Avenue
- Identification of a process to allow the City to substitute its expert witness in the area of planning, while allowing responding Parties an opportunity to Reply to the Motion

JURISDICTION

The TLAB relies on its Rules of Practice and Procedure (the Rules).

EVIDENCE

At the hearing held on April 17, 2019, the Appellants were represented by Mr. Joel Farber, the City was presented by Ms. Ellen Penner, and Briarcrest Manor was represented by Ms. Kelly Oksenberg.

After the Parties introduced themselves, I asked the Parties to provide any updates, where appropriate. Ms. Penner stated that Mr. Tony Lieu would substitute for Ms. Covello as the City's planning Witness, since the latter would be on parental leave in the month of July 2019.

After some discussion between Ms. Penner and Mr. Farber about the procedural details about the substitution of the City's Expert Witness, I suggested that the City put forward a Motion for the substitution of the planning Expert Witness, with appropriate submissions and supporting material. The Appellants would have the option of Replying to the Motion, after which the TLAB could issue an Order. Mr. Farber also stated that he would not be summoning Mr. Rapus, the City Heritage witness..

I emphasized the need to complete the hearing as efficiently as possible, and urged the Parties to send me the details of their availability so that peremptory dates could be identified to continue with the hearing. I also indicated that I would like to obtain at least one hearing date in July 2019, in the interests of continuity, and complete the hearing, as soon as possible. Ms. Oksenberg said that she would ensure that somebody from her office would be present at the hearing to be held in July, in case she couldn't attend.

After the completion of the hearing, the Parties sent emails to TLAB indicating their availability. The City put forward a Motion on 2 May, 2019, asking for the substitution of Ms. Covello with Mr. Lieu, and that the latter would adopt the statement of the previous Witness, if the Motion were granted.

ANALYSIS, FINDINGS, REASONS

My preference for the substitution of a Witness, as stated to the Parties during the teleconference, is by way of a Motion. From my perspective, a Motion provides sufficient detail to help understand what the Moving Party's intentions are, as well provide other Parties to send in a Response highlighting any concerns with the Motion.

The City sent its Motion on May 2, 2019; I think that it would be appropriate to give the responding Party **10 working days** from the date of issue of this Decision to send in a Response to the Motion; while the Moving Party may be given 5 working days to send in a Reply to the Response. After the Response and Reply (if any) are received, I will issue a written Decision, to making a Ruling on the Motion.

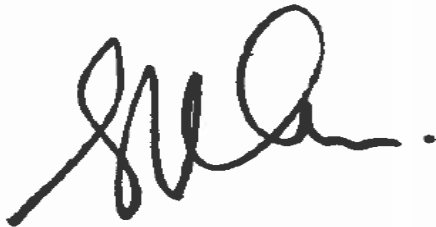
After consulting the TLAB staff, I find that space at the TLAB, and the Parties are available on July 26, 2019. I will therefore continue with the hearing on July 26, 2019.

DECISION AND ORDER

1. The hearing respecting 1982 Islington Ave. will continue on July 26, 2019. The date is peremptory; the hearing will commence at 9:30 AM at the TLABs offices at Suite 253, 40 Orchard View Blvd, Toronto.
2. The Appellants have until May 21, 2019, to send in a Response to the Motion brought forward by the City on May 2, 2019. The City is given time until May 28, 2019 to send in a Reply to the Response from the Appellants.

So orders the Toronto Local Appeal Body.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body