

DECISION AND ORDER

Decision Issue Date **Wednesday, June 05, 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): City of Toronto, Sandre Young Macdonald

Applicant: Glenn Rubinoff Design Group

Property Address/Description: 74 Thirty Eighth St

Committee of Adjustment Case File Number: 18 214025 WET 06 CO (B0071/18EYK), 18 214034 WET 06 MV (A0655/18EYK), 18 214035 WET 06 MV (A0656/18EYK)

TLAB Case File Number: 19 119206 S53 03 TLAB, 19 119208 S45 03 TLAB, 19 119209 S45 03 TLAB

Written Motion Hearing Date: Monday, April 29, 2019

DECISION DELIVERED BY J. Tassiopoulos

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Sandre Young Macdonald
Appellant	City of Toronto
Appellant's Legal Rep.	Marc Hardiejowski
Party	Matthew David Gismondi
Party	LBNA (Judy Gibson)
Participant	John Macdonald
Participant	Ron Jamieson
Participant	Christine Mercado

Participant	Dottie Irvine
Participant	Lulu Lazos
Participant	David Matoc
Participant	Ester Gomez
Participant	Alexander Donald
Participant	Hector Ribeiro
Participant	John Dennis Marshall

INTRODUCTION

This is a decision on a Motion filed on April 15, 2019 by Sandre Young MacDonald. Sandre Young MacDonald is an Appellant to the Committee of Adjustment (COA) decision for 74 Thirty Eighth Street, dated February 7, 2019. The COA approved a consent to sever the parcel and the related minor variances for proposed two storey dwellings on the resulting lots. Sandre Young MacDonald's Motion requests an adjournment of the scheduled hearing dates of July 19 and 22, 2019 due to the unavailability of two of their witnesses on that day.

BACKGROUND

The site is located on the west side of Thirty Eighth Street, south of Lakeshore Boulevard West. The minor variance applications requested a total of 9 variances, to By-law 569-2013, to permit the proposed dwellings on the resulting lots.

The Appellant's expert witnesses will not be available for the scheduled hearing dates. There were no responses filed to the Notice of Motion.

The Motion was considered in written form on the date provided, April 29, 2019. This is authorized by TLAB's Rule 23 Adjournments of the TLAB Rules of Practice and Procedure (May 6, 2019).

MATTERS IN ISSUE

As the Appellant's witnesses are not available on July 19 and 22, 2019, the preliminary issue to be determined is whether this absence is unduly prejudicial to the Appellant's presentation of their case. If the answer is yes, an alternative date must be selected that is acceptable to the Parties.

JURISDICTION

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules of Practice and Procedure. The TLAB, as per Rule 23.4, is free to alter hearing dates if convinced of the merits of the arguments in favour of the adjournment.

ANALYSIS, FINDINGS, REASONS

The principal argument in favour of accepting an adjournment is that scheduling the hearing on a day that the Appellant's witnesses are not available prejudices the Appellant's ability to call their case. This panel accepts that, in general, considering the availability of parties, representatives and witnesses when scheduling a hearing is an issue of procedural fairness and natural justice. Here it is not the availability of the person responsible for triggering the appeal process, but of the witness for Sandre Young MacDonald, a Party to the appeal. The TLAB's Rule 23.3, requires that the tribunal consider, among other matters, whether an adjournment would affect the interests of the parties in having a full and fair proceeding (clause b).

This panel accepts the Appellant's explanation of unavailability of its expert witnesses, in this circumstance, prejudices the ability to call their case. I have considered the Motion with respect to conducting a just and timely proceeding, whether an adjournment will cause potential harm or prejudice to the Parties, and that responses were not filed to this Notice of Motion, in accepting the Motion in favour of the adjournment of this matter.

DECISION AND ORDER

The Motion is allowed and the matter is adjourned. TLAB shall supply alternative hearing dates to the Parties and they shall indicate their availability for those dates. Once the new hearing dates have been established the timeline for witness statements as outlined in Rules 16.4 Party Witness Statement and 16.8 Expert Witness Statement will apply. The previous hearing dates of July 19 and 22, 2019, are cancelled and no attendance is necessary. No other changes will be made to the Notice of Hearing.

X



J. Tassiopoulos
Panel Chair, Toronto Local Appeal Body
Signed by: John Tassiopoulos