

REVIEW REQUEST ORDER

Review Issue Date: Friday, July 12, 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")

Appellant(s): PAUL ACCADIA

Applicant: VAN ELSLANDER AND ASSOCIATES ARCHITECTS

Property Address/Description: 77 THIRTY FIFTH ST

Committee of Adjustment Case File Number: 18 249037 WET 06 CO, 18 249038 WET 06 MV, 18 249039 WET 06 MV

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

Decision Order Date: Monday, May 13, 2019

DECISION DELIVERED BY Ian James LORD

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This is a request for a review (Request/Request for Review) under Rule 31.1 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB) made by Paul Accadia, Appellant and Party in respect of 77 Thirty Fifth Street (subject property).

The Request is to be considered under the Rules in effect at the time of the Notice of Hearing issued by the TLAB. Revised Rules issued May 6, 2019 are not applicable.

The Request seeks the reversal of a Decision and Order issued May 13, 2019 of Member J. Leung (Decision) made on a Motion for Adjournment brought by the Appellant, Mr. Paul Accadia (Requestor). It is in proper form (Form 10), comprised of an affidavit sworn May 30, 2019.

The Decision denied the adjournment Motion request.

There were no supporting or responding materials received by the TLAB.

BACKGROUND

The TLAB, by Notice of Hearing established a Hearing Date for July 9 and 10, 2019. The Notice of Hearing was issued March 20, 2019. The Motion for Adjournment was heard May 1, 2019.

The Request asserts that the refusal of an adjournment creates hardship on the Appellant who requires the assistance during the Hearing of the Long Branch Neighbourhood Association and, specifically, Ms. Christine Mercado, who 'greatly assisted...in the preparation of submissions'.

Ms. Mercado is also identified as a Participant to the proceeding, has filed the requisite materials and who may or may not be intended as a witness called by or on behalf of Mr. Accadia.

The Request asserts: "Requiring me to proceed to a hearing without the presence of the LBNA as a Party would undermine the quality of my presentation and cause me significant prejudice."

A reversal of the Decision is requested and the Requestor; it is noted that the Parties had previously agreed on their availability August 15 and 19, 2019, if an adjournment was granted. There is no attestation as to the continued relevance of these suggested dates.

The Decision notes that the adjournment Motion was not on consent.

JURISDICTION

Below are the TLAB Rules applicable to a request for review:

31.1 A Party may request a review of a Final Decision or order of the Local Appeal Body

"31.4 A Party requesting a review shall do so in writing by way an Affidavit which provides:

- a) the reasons for the request;
- b) the grounds for the request;
- c) any new evidence supporting the request; and
- d) any applicable Rules or law supporting the request.

31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

- a) seek written submissions from the Parties on the issue raised in the request;
- b) grant or direct a Motion to argue the issue raised in the request;
- c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or
- d) confirm, vary, suspend or cancel the order or decision.

31.7 The Local Appeal Body may consider reviewing an order or decision if the reasons and evidence provided by the requesting Party are compelling and demonstrate grounds which show that the Local Appeal Body may have:

- a) acted outside of its jurisdiction;
- b) violated the rules of natural justice and procedural fairness;
- c) made an error of law or fact which would likely have resulted in a different order or decision;
- d) been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision; or
- e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the order or decision which is the subject of the request for review.

31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties procedural directions relating to the content, timing and form of any submissions, Motion materials or Hearing to be conducted.”

CONSIDERATIONS AND COMMENTARY

The Request does not identify any grounds upon which it is founded. This omission is ameliorated somewhat by the Requestor’s reference to Rule 2.10, the suggestion of ‘prejudice’ and the potential that the TLAB may not have the best evidence upon which it can ‘effectively and completely adjudicate ‘ the matter.

The analogy that would perhaps best fit the Request would be Rule 31.7 b), above. Were it otherwise eligible for consideration, I would be prepared to consider the request premised on whether the requirement of Rule 31.7 b), or any other ground under the Rules had been met.

A Request for Review under the applicable Rule must meet criteria for consideration. The filing of an affidavit and its service on the Parties within the

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applicable limitation period (or its extension) begins the process of the TLAB conducting a Review.

However, the subject matter of the Request must also consist of a 'Final Decision' pursuant to Rule 31.1.

A 'Final Decision' is defined in Rules as:

"Final Decision" means the decision made by the Local Appeal Body following the Hearing of evidence and submissions".

As well, the term 'Motion' is defined:

""Motion" means a request that the Local Appeal Body make a decision or issue an order at any stage in a Proceeding".

A Motion is an interim proceeding along the path of the final disposition of an appeal. While it is the case that a Motion may determine a matter in issue in the Motion, that determination is not the resolution of the original appeal. Rather, it is a milepost along the way to a Final Decision, an administrative decision, that itself has the effect of disposing of the appeal after the conduct of the Hearing, scheduled by the Notice of Hearing.

In my view it is necessary that the entirety of the administrative process must be exhausted before a Review Request can be entertained. That process cannot be bifurcated by interruptions caused by a review request under Rule 31 in respect of every stop of the road to a final disposition. For that to occur, the public interest in achieving finality in a 'just, expeditious and cost-effective manner' (Rule 2.10), could be severely compromised.

There is nothing to prevent the Appellant from raising the disposition of the Motion as a matter for consideration following the final disposition of the matter in respect of the panel's Final Decision, in a Review Request properly formulated thereafter.

Even if I am wrong to suggest that the disposition on a Motion is not a Final Decision as contemplated by the Rules, there are two other grounds upon which the Request cannot succeed.

First, it is not the purpose of Rule 31 to permit the re-argument of a matter heard and disposed of by a Member. The Rule does not permit a shopping opportunity for a Request where a decision, interim or final, is made with which there is a disagreement.

There must be a ground asserted and demonstrated that falls within the category of review grounds established by the Rule.

In this case, the bald request is to reverse the Decision because of the inconvenience to a Party, the Requestor, that the support services of the LBNA are compromised by the unavailability of Ms. Mercado, a listed Participant.

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This is the very issue dealt with on the Motion; the Request is premised on identical grounds as were advanced in support of the Motion. The concerns expressed in the Motion and determined by the Member are the very concerns sought to be re-argued in the Review Request.

It is not the purpose of the Review Rule to permit the re-argument of the Decision.

It is also worth noting that the LBNA, a Party to the Hearing, took no position on the Review Request. Similarly, neither did Ms. Mercado. Although a Participant is not entitled to themselves found a Review Request, there is no prohibition on a Participant making submissions for or against a position taken by a Party to the Review.

Second, the Request fails entirely to address how the Member, in reaching the Decision, committed a compelling or demonstrable breach of any of the elements of the grounds upon which a Review may be considered.

It is incumbent on a Requestor to demonstrate the grounds of an alleged error as to how or why it occurred and, as appropriate, the consequences that result.

Only then can the reviewer start to adjudicate whether the Decision in review warrants any of the review remedies offered by statute, the Ontario Regulation and the Rule. Here, the Request fails to address that responsibility.

As indicated, while I may have been able to accept an eligible ground for review, the Request provides nothing by way of support for the evaluation of that ground. Mere disagreement with the Decision is simply not enough.

DIRECTION

On the basis that the Request fails on grounds of eligibility, intended purpose and a failure to support an identified ground for the Review Request, I find no need for further submissions, a Motion or other reconsideration.

Nothing in these reasons is intended to preclude subsequent argument or requests dealing with the subject matter following the Final Decision on the Appeal.

As well, nothing herein is intended to prevent the Parties from agreeing to present an adjournment request on consent.

DECISION AND ORDER

The Request for Review is dismissed; the Decision of the Member is confirmed.

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X

A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style and is positioned above a horizontal line.

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord