

# DECISION AND ORDER

**Decision Issue Date**      Monday, July 22, 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): ABDUL WADOOD TABIBZADA

Applicant: SOL ARCH

Property Address/Description: 58 RHYDWEN AVE

Committee of Adjustment Case File: 19 105338 ESC 20 CO, 19 105346 ESC 20 MV, 19 105347 ESC 20 MV

**TLAB Case File Number: 19 132097 S45 20 TLAB, 19 132110 S45 20 TLAB**

**Motion Hearing date:**      Friday, July 19, 2019

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Name	Role	Representative
Sol Arch	Applicant	
Daoud Tabibzada	Owner	
Sodaba Tabibzada	Primary Owner	
Abdul Wadood Tabibzada	Appellant	Sarah Hahn/Jonathan Benczkowski
Fiona Fars	Party	
Sandra Reilly	Party	
Tammy Cooper	Party	
Joseph Wa	Party	
Paul Keene	Party	

**Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA  
TLAB Case File Number: 19 132097 S45 20 TLAB, 19 132110 S45 20 TLAB**

Name	Role	Representative
Ken Poon	Party	
Esau Richard B	Participant	

## **INTRODUCTION AND BACKGROUND**

Daoud Tabibzada and Sodaba Tabibzada are the owners of 58 Rhydwen Court, located in Ward 20 (Scarborough Southwest) of the City of Toronto. They applied to the Committee of Adjustment (COA) to sever the existing lot at 58 Rhydwen Ave. into two lots, and variances, to construct a new two storey single family residential dwelling, on each of the two severed lots. The COA heard the application on March 21, 2019, and approved the consent to sever the property, and approved some of the variances, while refusing other variances, on the applications respecting the two severed lots.

Abdul Wadood Tabibzada appealed the Decision to the TLAB on March 28, 2019. Of the neighbours, Joseph. Wa, Sandra Reilly, Fiona Fars, Peter Keene, Tammy Cooper, and Ken Poon, elected for Party status, while Richard Esau elected for Participant status. The TLAB scheduled a Hearing on August 19 and August 20, 2019, and issued a Hearing Notice to this effect, on April 18, 2019.

## **MATTERS IN ISSUE**

The questions before the TLAB are:

- If the Hearing scheduled for August 19, 2019, and August 20, 2019, should be adjourned
- Should this Motion be heard in writing.

The Motion requests that the Hearing be rescheduled to a date when the Applicant's lawyer and planner are available.

## **JURISDICTION**

The TLAB follows its Rules of Practice and Procedure (the "Rules") to make decisions on procedural matters. By way of information, the "Old" version of the Rules released in 2017, were used to determine the outcome in this case, because the Appeal in filed in April 2019. The "New" version of the Rules are applied to all Appeal filed after May 6, 2019.

## **EVIDENCE**

On June 27, 2019, Ms. Sarah Hahn, a lawyer, brought forward a Motion asking that the Hearing respecting the Appeal at 58 Rhydwen Ave., scheduled for August 19, 2019, and August 20, 2019, be adjourned. The Motion refers to the accompanying affidavit filed by Mr. Jonathan Benczkowski, a planner representing the Appellant/Applicant, and provides a short account of the circumstances underlying the reason to file this Appeal.

Ms. Hahn states that she was retained by the Appellant, after the latter's previous lawyer did not follow up on instructions to file a Motion asking for an adjournment of the Hearing. Ms. Hahn also states that, following her retention as the Appellant's lawyer, her office contacted all the listed Parties and Participants, to ask if the Hearing could be adjourned, as a result of Mr. Benczkowski's travel plans. She states that Parties Fars and Poon responded that they would not consent to the adjournment, without providing any explanation, or underlying reasons. Participant Esau stated that he would not consent to the adjournment because "the application was not minor in nature, and the hearing should go forward". The Motion names other Parties who had not responded to the communication from Ms. Hahn's office.

The Motion asserts that the Appellant would be prejudiced, if their planner were absent at the Hearing, and contrasts the asserted prejudice to the Appellant, with the lack of prejudice to the opposing Parties, by virtue of being self-represented, if the Motion for an adjournment were granted. The Motion then lists the specific relief, as recited in the "Matters in Issue" section.

On June 28, 2019, Mr. Benczkowski filed an affidavit, in support of the Motion where he confirmed that he would be out of the town on August 19, and August 20, 2019. He provided details about the planned trip, and emphasized that his family would have to travel, for an important, and much awaited, family reunion. Mr. Benczkowski provided copies of airline tickets to demonstrate that they had been bought in February 2019.

Mr. Benczkowski's Statement also confirmed the basic facts, as stated in Ms. Hahn's Motion, including the Appellant's previous lawyer not being proactive, notwithstanding the latter's knowledge of Mr. Benczkowski's travel plans.

On July 4, 2019, the TLAB received paperwork, filed by Mr. Poon, and Ms. Fars, authorizing Mr. Esau to be their representative

On July 10, 2019, Mr. Esau filed a Notice of Response to the Motion stating that he would not consent to the adjournment, with accompanying reasons. The reasons were that Ms. Tammy Cooper, Mr. Graham Browne, and Mr. Paul Keene (all of whom are registered Parties in this Appeal) "are all teachers with the Toronto District School Board" and that the "August 19 and 20 dates are workable, because of the summer break." The submission goes on to state that the months of October and November would be "disruptive" for them to attend the Hearing.

The submissions by the opposition also question the reasons for the delay in Mr. Benczkowski's filing Form 10, and suggests remedies that would be satisfactory to the Respondents, including reducing the FSI of the planned houses. The submission also

acknowledges that their recommendation is “unusual”, but would allow the Appellant to get his building permits sooner, rather than later.

There was no Reply to the aforementioned Responses from the Moving Party.

## **ANALYSIS, FINDINGS, REASONS**

Under Rule 23 of the former Rules, applicable to Notices of Hearing issued before May 6, 2019, the TLAB may consider the requested reasons for an adjournment, and the interests of the Parties in having a full, and fair Proceeding, in order to come to a Decision.

I will first address the issue of hearing the Motion in writing. I note that while there are no explicit reasons put forward by the Moving Party about the need to hear the Motion in writing, and that the opposition members have not commented on what their preference would be, I find that a Written Motion is the most efficient, and time sensitive method of issuing a decision on adjournment. This conclusion is supported by the fact that the complexity of the matters arising in this Motion are such, that submissions are sufficient to reach a Decision.

While I am prepared to hear the Motion in writing, I will caution the Moving Parties that it is in their own interests to state reasons why the Motion should be heard in writing, or in person, depending on their preference.

It is important to note that. Ms. Hahn states, and Mr. Benczkowski confirms under oath, that the former lawyer retained by the Appellant was aware of Mr. Benczkowski’s travel plans, but did not file a Motion In time, for undisclosed reasons. As stated earlier, the Appellant then retained Ms. Hahn, who then filed the Motion for adjournment. From these facts, I conclude that the Appellant has made sincere efforts to advance the Appeal, in a reasonable, timely and fair fashion; his efforts were stymied only by the lack of pro-active action on part of the previous lawyer.

Mr. Benczkowski’s affidavit is thorough because it establishes that he had bought his tickets well in advance of the dates of the Hearing, and that there are strong family related reasons, which make it difficult for him to alter his travel plans.

Those Parties, who have responded to the Motion, are unanimous in their opposition to the adjournment. I note that there is no response on file from Parties Wa, Riley, Cooper, and Keene.

It is important to note that Mr. Esau, the only Participant, is the representative for Parties Poon, and Ms. Fars, and paperwork has been filed to reflect Mr. Esau’s representing the aforementioned Parties. Given that Mr. Esau is the Representative, It is not clear why separate ( if identical) responses were filed by Parties Poon, and Fars, in addition to Mr. Esau’s submission. This confusion is furthered by the lack of accompanying affidavits from the Parties, if their intention was to supplement the information, made available by their Representative.

However, no negative inference is drawn on the basis of the technical issue with Affidavits, or identical submissions from the Representative, and Parties. It is not necessary to delve into these matters, because my Decision relies on the substance, rather than the form, of the Responses.

What is important to note that is that the Response from the opposition essentially questions why it took Mr. Benczkowski “10 weeks” to file Form 10, followed by allegations that the schedule of the three Parties who have not filed Responses may be “disrupted” and then suggests remedies that can be followed through by the Appellant.

I note that neither the question posed of Mr. Benczkowski, nor the suggested remedy about reducing FSI, demonstrate any nexus with prejudice to the Parties in opposition, if the Appellants’ request for an adjournment was granted. The Response on behalf of the neighbours, who work for the TDSB, alludes to August hearing dates as being “workable”, while the October/November dates are “disruptive” While “disruptive” may rise to the level of inconvenience, it does not rise to the level of injustice. It is also important to note that there is no documentation available to the TLAB, demonstrating that Mr. Brown registered as a Party, or as a Participant.

More importantly, the Parties who responded to the Motion, do not identify any prejudice to themselves, but claim to speak for other Parties, who have not designated Messrs. Esau and Poon, or Ms. Fars, as their representatives. The basis for the submissions from the aforementioned Parties, seems to be purported representation on behalf of other Parties in opposition, as opposed to demonstrable, and documented representation. Consequently, no weight is attached to the submissions from Parties Poon, and Fars, and their representative, about the purported inconvenience to Parties Cooper, and Keene.

In conclusion, I am presented with a strong case by the Appellant where proceeding with the Hearing scheduled for August 19 and August 20, 2019 would be prejudicial to him. In contrast, the opposition does not put forward a case demonstrating prejudice to any Party, if the adjournment were granted.

Under these circumstances, I grant the adjournment, which means that the Hearing dates of August 19, 2019, and August 20, 2019, are herewith vacated, and require no attendance by the Parties, Witnesses, or Representatives.

A new Hearing Notice, may be issued, after canvassing the availability of the Parties, Witnesses, and Representatives to ensure maximal participation.

## **DECISION AND ORDER**

1. The Motion for adjournment is granted. The Hearing dates of August 19, 2019, and August 20, 2019, are herewith vacated, and no attendance by the Parties, Witnesses, or Representatives, is necessary on these dates.

**Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA**  
**TLAB Case File Number: 19 132097 S45 20 TLAB, 19 132110 S45 20 TLAB**

So orders the Toronto Local Appeal Body.

X 

---

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body