

DECISION AND ORDER

Decision Issue Date Monday, August 19, 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): SOLANGE DESAUTELS

Applicant: MELISSA MANDEL

Property Address/Description: 56 SEYMOUR AVE

Committee of Adjustment Case File: 17 259357 STE 30 MV (A1230/17TEY)

TLAB Case File Number: **18 157227 S45 30 TLAB**

Hearing date: Tuesday, May 21, 2019

DECISION DELIVERED BY S. Talukder

APPEARANCES

Name	Role	Representative
SOLANGE DESAUTELS	Appellant	
ANDREA MACECEK	Participant	
MELISSA MANDEL	Party (TLAB)/ Applicant	
CITY OF TORONTO	Party (TLAB)	GABE SZOBEL

INTRODUCTION

1. This is a written motion by the Applicant, Melissa Mandel, to have her Request for a Review with respect to the Toronto Local Appeal Body's (TLAB) decision dated July 8, 2019 accepted by the TLAB.
2. The Applicant is the owner of the property located at 56 Seymour Avenue (Subject Property).

BACKGROUND

3. There is a long procedural history associated with the Subject Property.
4. The Applicant filed an application for minor variances at the Committee of Adjustment (COA). The COA approved the minor variances.
5. The Appellant, Solange Desautels, appealed the COA's decision to the TLAB. Panel Member T. Yao issued a decision on October 1, 2018 (First Decision) allowing the appeal and refusing the variances that were requested by the Applicant.
6. The Applicant filed a Review of a Final Decision or final order for the decision issued on October 1, 2018 (First Review Request). This request was granted by the Panel Chair I. Lord. In his decision dated November 28, 2018 (Review Order), Chair I. Lord stated:

“The Request for Review by the Applicant submitted October 30, 2018 is granted. A rehearing is directed before a different Member.

As such, the Appeal continues.

The Hearing shall be de novo; all file materials shall be brought forward with the exception of the Decision dated October 1, 2018 (18 157227 S45 30 TLAB).

A new Notice of Hearing shall issue at the earliest opportunity; new filings shall be permitted in accordance with the Notice of Hearing.”

7. The new appeal was heard on May 21, 2019 before Panel member S. Makuch. In his decision dated July 8, 2019 (Second Decision), Panel member S. Makuch allowed the appeal and refused variances requested by the Applicant. Panel member S. Makuch stated in his decision:

“A first TLAB appeal allowed an appeal by a neighbour and denied the variances. A Request for Review ordered a new Hearing which does not include a review of the first TLAB decision or the review order. This Hearing, therefore, is based entirely on the evidence filed with TLAB and the evidence and argument presented at the May 21, 2019 Hearing.”

8. Following this hearing, the Applicant filed a second Review of a Final Decision or final order for the decision pursuant to TLAB Rule 31 (Second Review Request). TLAB required a motion by the Applicant to request permission from the TLAB to have the Second Review Request accepted for consideration. The Applicant filed this motion for an order to be permitted to file the Second Review Request with TLAB. The Appellant responded by filing a Notice of Response to Motion.

MATTERS IN ISSUE

9. At issue is whether the TLAB should accept for consideration the Second Review Request under TLAB Rule 31, given that the Applicant had previously filed a First Review Request with respect to the same requested variances for the Subject Property. In other words, does the prior First Review Request bar the Applicant from filing a subsequent request for review under the TLAB Rules?
10. In determining this issue, it is not necessary to consider the substance and the merit of the Second Review Request or consider the evidence or documents filed with TLAB for this Second Review Request. The issue before me is narrow and my decision for the motion does not have any implications on the merits of the Second Review Request itself. If this motion is granted, an independent TLAB panel member will consider the merits of the Second Review Request based on the requirements set out in TLAB Rule 31.

JURISDICTION

11. The applicable TLAB Rules are:

Definitions

1.2 In these Rules the following words or phrases, including any singular, plural or tense change as the context may require, have the following meaning:

...

“Final Decision” means the decision made by the TLAB following the Hearing of evidence and submissions;

...

“Hearing” means the stage in a Proceeding when the TLAB hears evidence and submissions and includes an Electronic Hearing, an Oral Hearing and a Written Hearing;

Local Appeal Body may Require Motions to be in Writing or Electronically

17.4 The Local Appeal Body may require a Motion to be held by Written Hearing or by Electronic Hearing upon such terms as the Local Appeal Body directs.

31. REVIEW OF FINAL DECISION OR FINAL ORDER

A Party may Request Review

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

Local Appeal Body may seek Submissions, Direct Motion, Rehear etc.

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.

Grounds for Review

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.

31.9 For the purposes of Rule 31 any decision following a review may not be further reviewed by the Local Appeal Body.

EVIDENCE

12. Both the Applicant and the Appellant included submissions and materials related to the merits of the Second Review Request in their motion materials. This discussion and the materials are not relevant for determining this motion. As such, I have not considered these arguments or included them as evidence.

13. The Applicant, in her affidavit, submitted that the Second Review Request complied with the TLAB Rules. She noted that the TLAB Rules state that the tribunal may review all or part of any final order or decision. The Second Decision was a final decision arising out of the new hearing that was heard on May 21, 2019. The Second Review Request related to reviewing the Second Decision and is not a

request for a review of the Review Decision. This latter Decision cannot be further reviewed pursuant to TLAB Rule 31.9.

14. The Applicant stated that a bar on filing a Second Review Request will have a nonsensical result, as it would allow a new Panel Member to make the same errors as those made in the original hearing. The new Panel Member could copy the first Member's erroneous reasons verbatim and would not provide any reasons at all. The second Panel member could make major factual errors that would impact the result. According to the Applicant, this is what has occurred, as Panel Member S. Makuch has repeated factual errors as the first Panel Member T. Yao.
15. The Appellant, in her affidavit, only discussed the merits of the Second Review Request. She did not argue why the Applicant's request for a review should not be accepted by the TLAB. She argued that there was no error in law or of fact in the Second Decision. These submissions, irrespective of whether they are correct or not, are not relevant to this motion of determining whether the request for a review itself should be accepted by the TLAB.

ANALYSIS, FINDINGS, REASONS

16. The motion should be allowed. The Applicant should be permitted to file the Second Review Request with respect to the Second Decision.

What is a review of a final decision or order?

17. A review of a final decision/order (under TLAB Rule 31) is a process to correct any errors made by the TLAB in final orders or decisions. A final decision is a decision that is made by the TLAB following the hearing of evidence and submissions and such decision is final with respect to that hearing (TLAB Rule 1.2).
18. The review process is not, as according to the Applicant's submission, a system to hold Panel members in check from acting with impunity. The review process cannot be used to oversee or hold Panel Members in check – to do so would diminish the adjudicative independence of Panel Members. Panel members, like any independent adjudicators, have the difficult task of hearing oral evidence, reviewing documentary evidence, analyzing the evidence and the law, and issuing decisions. Contrary to the Applicant's submission, there is no basis to suggest that adjudicators intentionally make errors, copy another member's errors verbatim or avoid providing reasons or analysis in their decision.
19. Despite the high standards required of adjudicators and their independence, a tribunal is not error proof - the difficult process of adjudication can lead to errors in written decisions. The review process available at the TLAB should only be used to facilitate the correction of these errors.
20. The TLAB Rules provide for screening in the review process to and can dismiss review requests that are spurious or do not have any merits. TLAB Rules 31.4- 31.8

are examples of such screens. To avoid any further frivolous or litigious conduct, a review decision pursuant to Rule 31 is not reviewable (under Rule 31.9).

Is the Second Decision a Final Decision?


21. The Review Order clearly states that there was to be a new *de novo* hearing in front of a different Panel Member. As such, the appeal started fresh – the first hearing and the First Decision were not of any relevance to the new second hearing scheduled on May 21, 2019.
22. Panel Member S. Makuch, as he had stated in his reasons, held a *de novo* hearing on May 21, 2019, which was based entirely on the evidence filed with the TLAB and the evidence and argument presented at the hearing. The hearing did not include a review of the first TLAB decision or the Review Order. The Second Decision by Panel Member S. Makuch dated July 8, 2019 is a Final Decision as it was the outcome of the said *de novo* hearing and no evidence from the first hearing was used to make this decision. The Second Decision and the First Decision are not connected. They each stand on their own separately.

Can the Applicant file a review request under Rule 31 with respect to the Second Decision?

23. The Second Decision is a Final Decision arising out from a *de novo* hearing with no connection with the first hearing or the First Decision. As the Second Decision is a distinct or separate decision, which resulted from a new hearing, it is reviewable under TLAB Rule 31. The matter of merit of the actual Second Review Request is not before me.
24. Accordingly, the Applicant is not barred from filing the Second Review Request under Rule 31.9. In this case, the Review Order and any review decision made with respect to the Second Review Request are final and cannot be further reviewed.

DECISION AND ORDER

25. The Applicant is permitted to file her request for review (Second Review Request) with respect to the decision dated July 8, 2019 for the Subject Property.
26. The Applicant must perfect the Second Review Request within 45 days of the date of this Order, failing which the TLAB shall close its file.
27. I have not made any findings on the merits of the Second Review Request. An independent TLAB Panel Member will be tasked with analyzing the merits of the Second Review Request based on the criteria set out in TLAB Rule 31.

X 

S. Talukder

Panel Chair, Toronto Local Appeal Body

Signed by: Shaheynoor Talukder