

DECISION AND ORDER

Decision Issue Date Wednesday, September 04, 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): XIAOYAN JIANG

Applicant: AMBER STEWART LAW

Property Address/Description: 17 BRAMBLE DR

Committee of Adjustment Case File: 18 188630 NNY 25 MV

TLAB Case File Number: 18 223820 S45 25 TLAB

Hearing date: Tuesday, February 19, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Xiaoyan Jiang	Owner/Appellant	
Amber Stewart Law	Applicant	Amber Stewart
Gordon Boughner	Party	
Prabha Haran	Party	
City Of Toronto	Party	Marc Hardiejowski
Lambros Stamadianos	Participant	
Matina Stamadianos	Participant	

INTRODUCTION

By correspondence dated August 28, 2019, counsel for the owner has requested an extension to the Interim Decision and Order issued March 5, 2019. That disposition provided a period of six (6) months for the owner/applicant to conduct specific activities, failing which there was a risk that all approvals sought would be lost.

The request for extension is supported by counsel's representations that, although revised plans were instructed, the requisite Plans Examination Notice has not yet been received.

Counsel also requests clarification on driveway design.

BACKGROUND

The appeal of this matter to the Toronto Local Appeal Body (TLAB) was hotly contested by area residents and the City who seek to retain character attributes of this short but clearly defined street, within a broader neighbourhood context of similar period housing.

In response to the solicitors correspondence, the concerns earlier expressed relating more to conduct (or the lack thereof) than, perhaps, substance, were again raised demonstrating a continued vigilance evidenced in the testimony earlier before the TLAB and referenced in the Interim Decision and Order.

The City simply acknowledged the requested extension to the compliance period, but fixed its agreement to a November 5, 2019 deadline.

MATTERS IN ISSUE

The Interim Decision and Order, in its operative clauses, provided as follows:

“1. The appeal from the decision of the Committee of Adjustment is allowed, in part, as follows:

a). Variances 1,4,5 and 6 as set out on Attachment 1 hereto are conditionally approved, subject to the owner or Applicant:

i) preparing a revised set of Plans, including a Site Plan and elevation drawings, to those in Attachment 2 incorporating the revisions necessary to implement this Interim Decision and Order (Revised Plans); and

ii) causing and having conducted a Plans Review resulting in an Examiner's Notice from the City as to whether the Revised Plans require any additional variances; and

iii) where the Revised Plans result in significant design, façade or building location changes, i.e., other than to the driveway and the pedestrian entrances as specified in this Interim Decision and Order, or if the Examiner's Notice identifies further or other variances, forthwith notifying the TLAB for the purpose of setting a teleconference date on Notice to all Parties.

b). The owner shall have a period of six (6) months from the date of the issuance of this Interim Decision and Order to comply with the provisions of paragraph a) hereof or advise that the appeal has been abandoned. The owner shall submit the Revised Plans and the evidence of the Examiner's Notice, together with an affidavit as to the extent of the Revised Plans revisions and the substance of the Examiner's Notice in respect thereof, electronically, to the TLAB and copied to the Parties. The TLAB upon such receipt may issue a final Decision and Order, with or without conditions.

c). If the TLAB is not in receipt of the materials described in paragraphs 1.a) and b) hereof within the time period set out in paragraph 1.b), or any extensions thereto granted by the TLAB, the appeal in respect of this paragraph 1 of this Interim Decision and Order shall be dismissed.

2. Despite the foregoing, the appeal from the Committee of Adjustment in respect of Variances 2, 3 and 7 as set out on Attachment 1 hereto is dismissed and the COA decision related thereto is confirmed....”.

Substantive compliance with the above terms is asserted to have not been met and the request for an extension is requested by one party and one participant, to be denied.

JURISDICTION

The TLAB has the same jurisdiction on this matter as invoked in the Interim Decision and Order. As well, on matters requesting procedural relief, as the request engages, the TLAB can resort to its *Rules of Practice and Procedure*. The applicants counsel requests resort to those Rules as an aide to completing the matter in a timely manner.

EVIDENCE

The evidence in this request is constituted by four (4) pieces of correspondence: the request itself; the assent of the City solicitor as described; and the objection of

Lambros and Matina Stamadianos, all dated August 29, 2019. On August 30, 2019, Mr. Gordon Broughner, a party, added his objection.

It is noted that the request was made on the eve of a long weekend, proximate to the expiry date. No affidavit accompanied the request and no evidence was supplied to support the representation that new or revised plans had been prepared in early July, that they had been filed with the City and a request for an Examiners Notice had been formally sought, or when.

The applicants counsel expresses a continuum to address the terms of the Interim Decision and Order and the reality that a guaranteed response time is not within the applicants control.

Those opposed express exasperation with the process, reference the history of Committee of Adjustment refusals and a lack of diligence in addressing the TLAB Interim Decision and Order.

I accept the communications as adjunct to the informal request for an extension of the time for compliance.

ANALYSIS, FINDINGS, REASONS

It is not unusual, in the TLAB's experience, to deliver Interim Decisions and Orders and set a date for the compliance with directions offered – only to have requests for extensions proffered. The TLAB has committed to a timely delivery schedule of final decisions. Decisions that are delayed act to the disadvantage and inconvenience of not just applicants but also to the City and general public in terms of outstanding uncertainty and the potential for error and loss of records - in increased distancing from decision making. Indeed, the TLAB's own level of service objectives are affected by delay.

It is for that reason that interim decisions have careful consideration being given to allow for the time and vicissitudes in the delivery and performance of conditions that may not be under the entire control of a party. The onus of compliance usually rests on the applicant.

That said, six (6) months is a substantial period for compliance. In this case, I have not been supplied with adequate reasons as to why the matter has not advanced on a timely basis. No original information is supplied. The request is vague as to particulars and raises a substantial, separate question of interpretation - nearly six (6) months after the Interim Decision and Order was released.

I accept the concerns expressed in opposition to the extension while at the same time recognizing that failure to comply is not the essential determinant of fairness.

I find it more appropriate to put counsel and the applicant on notice of the real potential for a loss of the approval of variances sought, or the potential for added

conditions, or including new proceedings and risk to the acceptance of plans, once revised.

I will vary the time period for compliance within the Interim Decision and Order on terms.

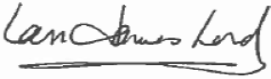
DECISION AND ORDER

The interim Decision and Order dated March 5, 2019 in this matter is varied to the extent that:

- a) The Applicant serve an affidavit as set out in paragraph 1. b) providing to the TLAB, the Parties and the Participants, the revised Plans and the extent of revisions thereto referenced in the request for an extension, dated July 5, 2019, together with evidence of and the communication forwarding the same and requesting an Examiners Notice / Preliminary Zoning Review thereof, on or before **October 4, 2019**.
- b) The Applicant thereafter serve an affidavit as set out in paragraph 1. b) providing the results of the response to the submission, on or before **November 5, 2019**.

The revised plans are to show one (1) driveway access/egress to Bramble Drive, red-lined or otherwise. This clarification shall not serve to justify an extension rationale.

In all other respects the Interim Decision and Order dated March 5, 2019 remains.

X 

Ian J. Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord