

DECISION AND ORDER

Decision Issue Date Tuesday, October 01, 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): MAZIAR MANI

Applicant: ALI KASHANI

Property Address/Description: 37 DEFOREST ROAD

Committee of Adjustment Case File: 18 269223 STE 04 MV

TLAB Case File Number: 19 164679 S45 04 TLAB

Written Motion Date: Monday, September 30, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
Ali Kashani	Applicant	
Zahraossadat Tousizadeh	Primary Owner	
Maziar Mani	Appellant	
Robert Gavin	Party	
Vincent Gladu	Party	
Jessica Paterson	Party	
Jason Healey	Party	
Shirley Charland Garvin	Party	
Margaret Healey	Party	
Name	Role	Representative

Monika Janus-Healey	Party
Michael Healey	Party
James Schaus	Party
James Healey	Party

BACKGROUND

Ali Kashani, applicant for 37 Deforest Road, had originally submitted a minor variance application for this property. The application proposes to construct a two storey front addition and a two storey rear addition to an existing two storey detached dwelling at the site. A series of 5 variances were requested which relate to exterior main wall height, front yard setback, floor space index, front yard soft landscaped area and vehicle entrance through front wall of building.

This application was heard at the Wednesday, May 15, 2019 Toronto and East York Committee of Adjustment (COA) meeting where it was refused by the Committee. The appellant/primary owner Maziar Mani elected to submit an appeal to the Toronto Local Appeal Body (TLAB) which is currently tentatively scheduled for hearing date of Thursday, October 24, 2019.

On Friday, September 13, 2019, Vincent Gladu, a party to these proceedings, submitted a *Notice of Motion Form 7* requesting an adjournment of the October 24, 2019 hearing date and to potentially reschedule it to Monday, November 25, 2019. In this motion request, Mr. Gladu asserts that the disclosure material as submitted by the appellant in relation to this appeal are substantial in nature. As he is a self-represented party and unfamiliar to TLAB practices and procedures, he contends that he requires more time to review and assess the materials as brought forward by the appellant so that he may properly prepare to represent his position at the TLAB hearing.

The appellant Maziar Mani subsequently provided a *Notice of Response to Motion Form 8*, dated Friday, September 20, 2019, with material included in that motion from the appellant's legal representative Marcin (Martin) Mazierski. Here, the appellant requests that the TLAB dismiss Mr. Gladu's request to adjourn the scheduled hearing to a later date. The legal counsel Mr. Mazierski asserts that the *Expert Witness Statement Form 14* as provided is a large document at approximately 700 pages. However, Mr. Mazierski contends that there are certain elements of these documents which the other parties only need to focus on to sufficiently prepare for the impending proceedings.

The disclosure documents as provided by the appellant, he states, are typical of such TLAB appeals and necessary for all parties, including the presiding TLAB member, to appropriately prepare for the hearing. Moreover, Mr. Mazierski states that the witness statement is prepared to primarily serve as a reference document for the expert witness to use during the hearing. Finally, he cites the *Toronto Local Appeal Body – Rules of Practice and Procedure* in arguing that the appellant has submitted and participated in the appeal process in accordance with the *Rules*. The motion request by the opposing

party does not posit an appropriate rationale as to why an adjournment should be granted.

The moving party Vincent Gladu provided a *Notice of Reply to Response to Motion Form 9* dated Tuesday, September 24, 2019 whereby Mr. Gladu provides contrary arguments as previously articulated by legal counsel Mr. Mazierski. Mr. Gladu argues that the appellant is attempting to confound matters by stating that only approximately 30 pages of the disclosure documents are of significant to this appeal. If this were accurate, Mr. Gladu inquires as to why the other material was also submitted to TLAB. He again reiterates that the other parties to the matter are principally local residents who are unable to retain professional representation for this TLAB matter. As such, it is reasonable to assume that they be provided greater latitude by the tribunal to properly prepare themselves as self-represented parties.

In terms of requesting that the scheduled hearing date be reassigned to an alternative date of Monday, November 25, 2019, Mr. Gladu clarifies that the date was not definitive in nature and that they are willing to accept any other date the TLAB is able to arrange. This *Form 9* also contains 8 other parties who are in support of the motion provided by Mr. Gladu.

ANALYSIS, FINDINGS, REASONS

To provide a context for this motion request, it is pertinent to assess another TLAB appeal matter in which a similar request was presented. This can be seen with TLAB appeal matter for 135 John Street. There, the appellant's legal representative requested an adjournment due to a family funeral they needed to attend which would conflict in their ability to attend the scheduled hearing. In response to this motion request, TLAB member Gillian Burton issued a Motion Decision, dated Tuesday, August 7, 2018, where it is noted that all parties consented to this request and two new hearing dates had been found in consultation with the parties and with TLAB staff. The requisite filings for that appeal are also substantive as the matter pertained to a severance (consent) application and associated minor variance applications. In assessing the file, it outlines the typical circumstances in which an adjournment request is granted. Due to an extraordinary personal situation, the legal counsel for the appellant was unable to attend the scheduled hearing date. Once apprised of this, the other parties conveyed understanding of this situation and agreed to new hearing dates being found for this appeal. Moreover, TLAB Member Burton surmises that the Rules as stipulated by the TLAB outline:

“Under Rule 2.10, the TLAB may grant all necessary exceptions to the Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters in a just, expeditious and cost-effective manner.”¹

This Rule acts to guide TLAB members in their assessment of the merits for an adjournment request. The TLAB, as per Practice Directions which have been assented

¹ Toronto Local Appeal Body-Scheduled Hearings & Decisions: Decision & Order: 135 John St, (2018, August 7) Retrieved from https://www.toronto.ca/wp-content/uploads/2018/08/964d-TLAB_18-128861-S53-11-TLAB_135-John-St_Motion-Decision_LMcPherson.pdf

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to by the TLAB members collectively, directs that hearing dates should be retained and would only be altered due to extenuating circumstances. This is to ensure that the overall appeals process is conducted in a manner consistent with the legal principle of procedural fairness. The TLAB appeal for 135 John Street illustrates how, owing to personal emergencies, the tribunal would be considerate of such occurrences and to ensure that such situations do not impede the full participation of all parties involved to an appeal. As that appeal matter related to a land severance, typically there would be more significant document filings and multiple hearing dates would need to be arranged as the planning implications are weighed to also be more substantial.

In relation to the matter at hand, the moving party does not appear to sufficiently demonstrate how the appellant has not participated in compliance with *TLAB Rules*. In review of other TLAB matters currently being adjudicated by the tribunal, it is not dissimilar in terms of the disclosure documents which appellants must provide to the TLAB. Such filings would be consistent with the *TLAB Rules* and the *Statutory Powers Procedures Act* which governs several provincial tribunals. In terms of having adequate time to review these materials for the other parties involved, it is noted that there is still approximately a month's time to conduct such an exercise. With regards to the contention that the appellant's legal counsel is attempting to stymie the participation of the other parties through submission of a large number of disclosure documents, it is noted that Mr. Mazierski is recognized as an experienced practitioner appearing before the TLAB in previous instances. The filing of policy documentation and related matters associated with the applicable tests and legislation is a common occurrence that often extends to several hundreds of pages, as the TLAB's own 'Common Document Book' attests.

With the materials that have been presented to the TLAB as such, the tribunal does not find reasonable grounds to permit an adjournment at this juncture.

In relation to *TLAB Rule 2.11* (prescribed as Rule 2.10 under the previous iteration of the *TLAB Rules*), the TLAB does not believe an adjournment would act to ensure a fair and timely hearing to be executed. The extenuating circumstances as conveyed by the moving party are not persuasive in delaying the proceedings as the document filings are similar in orientation to other TLAB matters such as 135 John Street as referenced previously.

It is noted that the opposing parties to this appeal have themselves submitted substantive materials to the TLAB which, in turn, the appellant would also have to review prior to the hearing. While the tribunal does not have or find reasonable grounds to delay the proceedings, it does recognize that unrepresented parties may not be as versed in tribunal procedures and practices to other professionals such as lawyers and planners. TLAB members are aware of such a phenomenon and will, during the proceedings, provide a more relaxed environment for such unrepresented parties to present their case.

Such measures could include providing such parties more time during proceedings to review materials before them, arranging sufficient breaks to allow them to further prepare and allowance to offer testimony or questioning of witnesses which would be structured in a more lay person approach. The TLAB is organized to ensure all

parties of various backgrounds are properly accommodated to participate in the appeal process.

DECISION AND ORDER

This request for adjournment is denied and the hearing set for Thursday, October 24, 2019 can proceed as originally scheduled.



Justin Leung
