

# DECISION AND ORDER

**Decision Issue Date**      Friday, October 18, 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): Yanan Wang

Applicant: Alex Boros

Property Address/Description: 38 Lorraine Dr

Committee of Adjustment Case File Number: 19 121264 NNY 18 MV (A0168/19NY)

TLAB Case File Number: 19 161165 S45 18 TLAB

**Hearing date:**      Monday, September 30, 2019

**INTERIM DECISION DELIVERED BY S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

|                        |                    |
|------------------------|--------------------|
| Appellant              | Yanan Wang         |
| Appellant's Legal Rep. | Simon Van Duffelen |
| Owner                  | Lo Wong            |
| Applicant              | Alex Boros         |
| City of Toronto        | Jason Davidson     |

## INTRODUCTION AND BACKGROUND

It may be of some interest to review the series of Decisions on Motions put forward by Parties in this case, to understand my reasoning in sending out this interim Decision.

In early July 2019, the Appellants brought forward a Motion asking for a postponement of the Hearing, since their Counsel would be out of town on the day the case was

originally scheduled to be heard. After Member Yao granted the Motion and set a new Hearing date for September 30, 2019, the City of Toronto brought forward a Motion on July 24, 2019 asking that it be allowed to elect for Party status, notwithstanding its missing the deadline for election. This was followed by an email from the Appellant asking for extra time for exchanging statements, to facilitate Settlement discussions between themselves and the City. In my Decision dated August 14, 2019, I granted the City's Motion, and gave the Parties extra time for exchanging Statements.

It is important to note that no submissions were made by the Appellants, or the City before the Hearing. On the afternoon of September 27, 2019, I was made aware that the City and the Appellant had reached a Settlement, and the Minutes of the Settlement were forwarded to me.

## **JURISDICTION**

The TLAB's Rules of Practice and Procedure, (Rules) are relied upon for the purposes of Decision making.

## **EVIDENCE**

The Hearing held on September 30, 2019, was attended by Mr. Jason Davidson, lawyer for the City, Mr. Simon Van Duffelen, lawyer for the Appellant, and Mr. Alex Boros, Witness for the Appellant.

Mr. Davidson drew my attention to the contents of the Minutes of Settlement, and said that the Parties had agreed that additional notice was necessary, because the final set of variances, resulting from the Settlement were not minor, under Section 45.18.1.(1) i.e. they had increased from what was of right, compared to the original set of variances submitted by the Appellant.

Mr. Davidson emphasized that the Minutes of Settlement included a clause, which requested that the Hearing be completed on September 30, 2019. The Minutes of Settlement would also require the TLAB to identify a possible second Hearing date, where neighbours in opposition to the new variances, could come forward to give evidence. Mr. Davidson explained that the Appellants would circulate requisite notice in the neighbourhood around the Subject Property, after the completion of the Hearing on September 30, 2019, so that the concerned neighbours could be informed about the new variances, and come forward to give evidence on the planned second day of the Hearing, if necessary

Mr. Davidson then asked if that Mr. Boros could give evidence in support of the variances, before adding that there may not be a need for a second day of Hearing, if no objections were received from the neighbours.

I stated my preference for the entire Hearing to be completed in one sitting, and suggested that we could identify a second Hearing date, and reconvene, after notice was given to the neighbours, thereby giving them an opportunity to state their opposition, where appropriate. I pointed out that the advantage of having everybody reconvene on the second day of Hearing would be that Mr. Boros, and the neighbours who had elected to participate in the Hearing, could hear each other's evidence, and ask questions of each other, where appropriate.

Mr. Davidson and Mr. Van Duffelen agreed with my suggestion about hearing the entire case after reconvening on the identified second day of Hearing. I ended the Hearing by stating that the TLAB staff would be in touch with the Parties to canvass dates, and that I would issue an Interim Order, which would set out the methodology for the Hearing, on a go forward basis, as stated in the previous paragraph.

I also sent out an email later on September 30, 2019, asking that a Witness Statement be submitted by the Appellant, three weeks before the Hearing date in order to enable me to come prepared to understand the rationale for the proposal, as well as raise any issues and concerns to be addressed by the Witness.

The TLAB staff subsequently informed me that the Parties were available on December 18, 2019.

## **ANALYSIS, FINDINGS, REASONS**

The reasoning for my preference for hearing the evidence in its entirety, from the Appellants, and opposition members ( if any), on the same day, with everybody present, is stated in the previous section, and is consequently not repeated here.

While I appreciate Mr. Davidson's thoughtfulness in trying to ensure that the Hearing scheduled for September 30, 2019, would be utilized efficiently to complete the case, I point out that the absence of a Witness Statement from the Appellant, would have made it difficult for me to complete the Hearing.

I observe that Parties are required to disclose Statements, as stated in the Rules, even if there is no Party, or Participant, in opposition to the Appeal. It is my belief that should there be no Parties, nor Participants in opposition to an Appeal, there is a need for more vigilance, and attention to the details of the Appeal, on the part of the adjudicator-ensuring that a Statement is submitted in a timely fashion facilitates the Adjudicator's doing their duty, by way of due diligence.

I conclude by stating that I am in agreement with the decision of the Parties to give Notice to the neighbours, and ask the Appellants to submit an Expert Witness Statement **three weeks** ( 3 weeks) in advance of the Hearing, or by the end of day on **27 November, 2019**.

Neighbours who want to oppose the Appeal, are requested to indicate their opposition **by December 4, 2019**, and indicate their preference for election as Parties or

Participants on the same date. While a formal Motion to elect for status is not suggested because of the tight time lines, a determination about the neighbour's ability to elect as a Party, or a Participant, will be made at the beginning of the Hearing.. Community members wishing to participate in this Hearing should also submit a Statement indicating the reasons for their opposition to the proposal, by **December 11, 2019**.

It is important to emphasize that the Hearing date of **December 18, 2019**, is peremptory, and requires the in-person attendance of both Parties, as well as any other community members in opposition to the proposal.

## **DECISION AND ORDER**

- 1) The Hearing for 38 Lorraine Dr. is adjourned to 9:30 AM on December 18, 2019, and will be held at TLAB's Offices at 40 Orchard Blvd. Road.
- 2) Neighbours who elect for Party or Participant status may do so by December 4, 2019, and submit a Statement by December 11, 2019, indicating the reasons for their opposition to the Appeal. An updated Hearing Notice, stating the deadlines for election as a Party or Participant, and for submitting a Statement, may be issued.
- 3) The Appellants need to submit an Expert Witness Statement by November 27, 2019, to the TLAB.

In case of any difficulties, the TLAB may be spoken to.

So orders the Toronto Local Appeal Body

X 

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body