

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, November 20, 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): Aphrodite Rubello

Applicant: Veronique Allard-Bufferet

Property Address/Description: 49 Chester Ave

Committee of Adjustment Case File Number: 19 104435 STE 14 MV (A0036/19TEY)

TLAB Case File Number: 19 198659 S45 14 TLAB

**Written Motion Date:**      Monday, October 21, 2019

**DECISION DELIVERED BY J. Tassiopoulos**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	Veronique Allard-Bufferet
Appellant	Aphrodite Rubello
Party	Parvin Ghorayshi
Party's Legal Rep.	Robert Brown
Participant	John Robert Dales

## INTRODUCTION & BACKGROUND

This is a decision on a Motion filed on October 22, 2019 by Parvin Ghorayshi a Party in this matter with respect to the Appeal from the Committee of Adjustment (COA) decision for 49 Chester Avenue (subject property), dated July 11, 2019. The COA refused variances sought for the alteration of an existing two-storey semi-detached dwelling. Parvin Ghorayshi's Motion requests that the Hearing date for November 25, 2019 be adjourned to a date in early 2020. In the Motion, it is explained that the reason for the adjournment is due to the Representative, Robert Brown, not being able to attend the Hearing due to the fact that his cataract surgery dates have been advanced to

**Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos**  
**TLAB Case File Number: 19 198659 S45 14 TLAB**

November 22, 2019 and December 13, 2019 from the original dates in the Spring of 2020. Robert Brown, has indicated in his sworn Affidavit (Form 10) submitted with the Motion, that full recovery is projected to be in the range of 6 to 8 weeks.

The subject property is located on the east side of Chester Avenue, north of Danforth Avenue. The variance application requested 11 variances to By-law 569-2013 and 2 variances to By-law 438-86 to permit the proposed alteration of the existing two-storey semi-detached dwelling.

The Motion was considered in written form on the date provided, October 21, 2019. The consideration of a Hearing adjournment is authorized by Rules 23.2, 23.3, and 23.4 of the TLAB Rules of Practice and Procedure (Rules, revised May 6, 2019).

## **MATTERS IN ISSUE**

Are the reasons for the adjournment sufficient to request new hearing dates?

Does an adjournment of the Hearing prejudice the Appellant, any Party or Participant with respect to hearing procedures?

If the hearing is not adjourned to a new date will it compromise the Party's right to having a full and fair Proceeding to present their objection on the Appeal?

## **JURISDICTION**

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules. The TLAB, as per Adjournment Rules 23.2, 23.3, and 23.4 of the TLAB Rules is free to adjourn the Hearing subject to these rules and conditions.

## **EVIDENCE**

Evidence in the form of an Affidavit sworn by Robert Brown was submitted indicating that the reason for the adjournment request was that he would not be able to attend the Hearing due to his cataract surgery dates being advanced to November 22, 2019 and December 13, 2019 from the original dates in Spring 2020. The Affidavit also indicated that full recovery from the surgery is projected to be in the range of 6 to 8 weeks. The recovery time indicated was confirmed with the attachment of the Kensington Eye Institute's Patient Instructions form.

Leah Weller submitted a Notice of Response to Motion (Form 8) on behalf of the Appellant, Aphrodite Rubello, requesting that the motion to adjourn the Hearing not be granted. The response to the Motion to adjourn indicates that the Appellant has made numerous attempts "*to address and resolve outstanding issues with her attached*

*neighbour since the inception of her renovation project and throughout she has been met with indifference at best, and lately resistance and attempted delay by Ms. Ghorayshi at worst.”* It goes on to suggest that there is ample time for the Party to retain another Representative and that adjourning the Hearing “*will be unfairly prejudicial to Ms. Rubello, while Ms Ghorayshi will gain nothing from the delay and it is therefore not in the public interest to grant the request.*”

The response by the Appellant also suggests that Mr. Brown is scheduled for other TLAB Hearings to take place on November 29 and December 5, 2019 and question why this Hearing has to be delayed by the added months as it will add time and cost. The response also claims: “*it appears that the request to reschedule the hearing is not meant to allow for a more productive outcome of the hearing, but rather, has been submitted in an attempt to delay Ms Rubello’s project, and therefore appears to be vexatious and frivolous. Further, and that it will be unfairly prejudicial to Ms Rubello, while Ms Ghorayshi will gain nothing from the delay and it is therefore not in the public interest to grant the request.*”

Finally, the recovery time from surgery indicated by Mr. Brown in his Affidavit, was questioned by the Appellant and they provided references to the Mayo Clinic, the Government of Alberta, and the Royal College of Physicians (United Kingdom) websites suggesting that recovery time from surgery is much shorter than the time requested.

## **ANALYSIS, FINDINGS, REASONS**

I have considered the Motion with respect to whether the reasons for the adjournment of the Hearing are sufficient, whether it prejudices the Appellant with respect to hearing procedures, the interest of Parties in having a full and fair Proceeding, and the considerations as outlined in TLAB Rule 23.3.

The principal argument and reason in favour of accepting the Motion to adjourn the Hearing, is that the Representative of one of the Parties will not be available to take part due to scheduled surgery and the recovery time required post-surgery. Considering that this Motion was accompanied by a sworn Affidavit by Mr. Brown and that the recovery time is confirmed in the accompanying Kensington Eye Institute’s Patient Instructions, it should be simple to conclude that Mr. Brown would not be in a position to attend the hearing. Given that the first surgery is to take place on November 22, 2019, it appears optimistic to believe that just a few days later, on November 25, 2019, Mr. Brown would be able to present for the Party in this matter. Besides being thoughtless, if I were to ask Mr. Brown to attend the Hearing just a few days after his surgery, it would put into question the notion of a full and fair proceeding.

With respect to the suggestion that there was ample time for the Party, Parvin Ghorayshi, to retain another Representative, I find this to be unfair since it appears that Mr. Brown has been involved in this matter for several months and to suggest a substitute at this point creates an unfair advantage for the Appellant. I would also note

that in my previous decision of November 6, 2019 (a Motion made by the Appellant to extend the deadlines for disclosure of documents) Aphrodite Rubello, was granted the extension to ensure a full and fair proceeding. The Affidavit that was filed with that previous Notice of Motion included an email, dated October 3, 2019, from Mr. Brown, which indicated support for the extension of the deadlines; as well, that the possibility of a TLAB supervised mediation be considered. Given that this relief was provided to the Appellant previously and that many documents have been disclosed by the Appellant since that decision, it would be problematic from a position of fairness to not also grant this Motion for adjournment to ensure fairness in the proceeding.

With respect to questioning of recovery time for cataract surgery and maximum and minimum recovery times for surgery is not within the scope of TLAB expertise. The provision of the Kensington Eye Institute's Patient Instructions, in the Affidavit filed with the Motion, clearly indicates that the "*eye may take up to 6 to 8 weeks to heal*". I accept the documentation and the Kensington Eye Institute's post-operative instruction with respect to cataract surgery.

## **DECISION AND ORDER**

The Motion to adjourn is allowed and the Hearing for November 25, 2019 is cancelled.

TLAB administrative staff shall provide a new Hearing date, preferably in early February 2020 and will canvas the Parties and Participant on availability. Failing agreement, the TLAB will schedule a peremptory date.

I strongly encourage the Parties and Participant to ensure that they are available for a February 2020 Hearing date and that the matter can be completed in the time allocated. Given the protracted considerations to date and familiarity with the issues, the TLAB may impose limits on the time available for those present to conduct their case. This can be addressed on reconvening.

There are no other changes to the Notice of Hearing arising from this Motion.

**X**

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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body