

DECISION AND ORDER

Decision Issue Date Friday, December 27, 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): 1742385 ONTARIO INC

Applicant: BATTAGLIA ARCHITECT INC

Property Address/Description: 939 WARDEN AVE

Committee of Adjustment Case File: 17 207626 ESC 37 MV

TLAB Case File Number: 19 212994 S45 21 TLAB

Last Date to Submit: Thursday, November 28, 2019

DECISION DELIVERED BY SEAN KARMALI

APPEARANCES

Name	Role	Representative
Battaglia Architect Inc.	Applicant	
1742385 Ontario Inc.	Owner/Appellant	Mark Russell
Adam Layton	Expert Witness	
City of Toronto	Party	Lauren Pinder

INTRODUCTION

On August 22, 2019, the Committee of Adjustment (COA) Scarborough District refused a variance application in respect of 939 Warden Avenue, the subject property. On August 26, 2019, the TLAB received a Notice of Appeal (Form 1) along with a survey from Mr. Joseph Battaglia, on behalf of the Appellant, a named corporation, 1742385 Ontario Incorporated.

On September 23, 2019, the TLAB issued a Notice of Hearing (Form 2) to the Applicant/Appellant, the Secretary-Treasurer of the COA, and several Interested Parties. Form 2 states, among things, the Hearing will take place on January 9, 2020 at 9:30 am.

On October 3, 2019, the TLAB received a Notice of Intention to be a Party (Form 4) from Ms. Lauren Pinder, on behalf of the City of Toronto.

On November 14, 2019 the TLAB received an Authorized Representative prescribed document (Form 5) from Mr. Mark Russell of Friedman Law Professional Corporation.

On December 6, 2019, the TLAB received a Notice of Motion (Form 7) from Mr. Russell along with an Affidavit (Form 10) from Ms. Danielle Mallozzi, a Student-at-law where Mr. Russell works. The Moving Party seeks an order for an extension of time to file documents to the TLAB in respect of the Expert Witness it plans to call on Hearing date. The request appears to be made on consent of the Responding Party, the City of Toronto. The consent is represented in email correspondence between Mr. Russell and Ms. Pinder. The correspondence, for this purpose, occurred between November 21, 2019 and December 5, 2019.

There are no other individuals with party or participant status in this matter.

Should the TLAB require this Motion be held in writing? How should the TLAB respond to the merits of Motion request?

BACKGROUND

Form 1 prescribes timelines for submissions in accordance with the Rules of the TLAB. The timelines for the proceeding of the subject property were indicated on the Notice of Hearing as follows:

- **Applicant Disclosure** as per Rule 11 (Form 3) **DUE** no later than October 15, 2019
- **Notice of Intention** to be a Party as per Rule 12 (Form 4) **DUE** no later than October 23, 2019 or
- **Notice of Intention** to be a Participant as per Rule 13 (Form 4) **DUE** no later than October 23, 2019
- **Document Disclosure** as per Rule 16 **DUE** no later than November 22, 2019
- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than November 22, 2019
- **Response to Witness Statement** as per Rule 16.5 (Form 19) **DUE** no later than December 09, 2019
- **Reply to Response to Witness Statement** as per Rule 16.5 (Form 20) **DUE** no later than December 17, 2019
- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than November 22, 2019
- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than November 22, 2019
- **Response to Expert Witness Statement** as per Rule 16.9 (Form 21) **DUE** no later than December 09, 2019

Decision of Toronto Local Appeal Body Panel Member: S. KARMALI
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- **Reply to Response to Expert Witness Statement** as per Rule 16.10 (Form 22) **DUE** no later than December 17, 2019
- **Notice of Motion** as per Rule 17 (Form 7) **DUE** no later than December 27, 2019

What is germane to this Motion is Part 3 (the Order requested) and Part 4 (the grounds for the Order) as stated on Form 7. These Parts are identified in Appendix A of this Decision and Order.

JURISDICTION

The Revised Rules of Practice and Procedure as adopted by the Toronto Local Appeal Body, pursuant to the *Statutory Powers Procedure Act* govern the Motion request and the Decision and Order.

In particular, Rule 2 (Interpretation), Rule 4 (Time), and Rule 17 (Motions) apply. These rules will be briefly discussed pertinent to the Motion.

EVIDENCE, ANALYSIS, FINDINGS, REASONS

The TLAB is committed to fixed and definite dates. The Revised Rules are to be interpreted in a manner which facilitates this objective.

The Moving Party requests late filing dates of various document submission types. Mr. Russell states the recently retained expert planner needs time to prepare a witness statement. The chart below indicates the requested late filing dates, as proposed by Mr. Russell.

CHART 1

DOCUMENT SUBMISSION TYPE	ORIGINAL DUE DATE	REQUESTED LATE FILING DATE
Document Disclosure as per Rule 16	DUE no later than November 22, 2019	DUE no later than December 23, 2019
Witness Statement as per Rule 16.4 (Form 12)	DUE no later than November 22, 2019	DUE no later than December 23, 2019
Expert Witness Statement as per Rule 16.6 (Form 14)	DUE no later than November 22, 2019	DUE no later than December 23, 2019
Response to Witness Statement as per Rule 16.5 (Form 19)	DUE no later than December 09, 2019	DUE no later than January 3, 2020
Response to Expert Witness Statement as per Rule 16.9 (Form 21)	DUE no later than December 09, 2019	DUE no later than January 3, 2020

In his Motion materials, Mr. Russell identified documents he would like to have marked as exhibits by the TLAB. I have charted these documents below and have accepted them as Exhibits for the purpose of this Motion request.

CHART 2

Document	TLAB Form Number	Exhibit Letter (as identified by Mr. Russell)
Notice of Appeal	Form 1	A
Notice of Hearing	Form 2	B
Notice of Intention to be a Party (City of Toronto)	Form 4	C
Authorized Representative	Form 5	D
Email Correspondence (Request for Extension by Mr. Russell to Ms. Pinder – November 21, 2019)	N/A	E
Email Correspondence (Response to Request for Extension by Ms. Pinder to Mr. Russell, December 5, 2019)	N/A	F

In compliance with Rule 17.1, the Appellant's legal representative submitted a Notice of Motion more than 15 days before the Hearing Date of January 9, 2020. Relying on Exhibit E and Exhibit F, the Moving Party and the Responding Party appear to have consented to the requested late filing dates of the various submission types indicated in Chart 1.

The effect of prejudice on parties arising from late disclosure is important for me to know and to provide for a full and fair hearing. The Moving Party stated no prejudice will result if the relief identified in Part 4 of Form 7 is granted. To that end, I do not have evidence before me about the effect of prejudice the City of Toronto would experience from the late filing of disclosure. The extent of late disclosure is one consideration in understanding prejudicial effect. However, I do not have a formal Notice of Response to Motion and Service from Ms. Pinder. Indeed, there may not have been a need to respond.

The Moving Party confirmed it is ready to proceed on January 9, 2020. The Moving Party remarked that the Responding Party is also ready to proceed on this date. Should there be a reply to the Response to the Expert Witness Statement, the Reply is due no later than January 6, 2020.

The Motion was requested to be held to be in writing in accordance Rule 17.6. I accept the motion request need not be heard in the format of an oral hearing. The request can be sufficiently dealt with in writing. I find the time limits identified in Chart 1 are appropriate given the circumstances. This finding is based on Rule 4.4 and Rule 4.5. The Motion request is substantially compliant with the requirements of the Revised Rules.

As a friendly reminder, the TLAB relies on those involved to be of assistance for it to effectively and completely adjudicate matters in a just, expeditious and cost-effective manner.

DECISION AND ORDER

The request that the Motion be held in writing is granted. The Motion itself is granted. I order in favour of permitting the Parties to file disclosure and statements as stated in Appendix A - Part 3.

X 

Sean Karmali
Panel Chair, Toronto Local Appeal Body

Notice of Motion Form 7

Part 2: Moving Party (Continued)			
Position Title (if applicable) Solicitor		Email mr@friedmans.ca	
Street Number 939	Street Name Warden Avenue		Suite/Unit Number
City/Town Scarborough		Province Ontario	Postal Code M1L 4C5
If this Notice of Motion is filed by an Authorized Representative, please identify the Party:			
Party First Name Mark		Party Last Name Russell	
<input type="checkbox"/> Check this box if First Name and Last Name do not apply to you because you have either a registered Birth Certificate or Change of Name Certificate bearing a Single Name. Provide your name below.			
Party Single Name			
Party Email mr@friedmans.ca			

Part 3: For an Order as follows:
(State the specific relief requested using numbered paragraphs)
The moving party, 1742385 Ontario Inc., seeks an order, made with the consent of the responding Party, the City of Toronto (collectively, the "Parties"), as follows:
1. An Order permitting the Parties to file their: <ul style="list-style-type: none">i) Document Disclosure no later than December 23, 2019;ii) Witness Statements no later than December 23, 2019;iii) Expert Witness Statement no later than December 23, 2019;iv) Response to Witness Statement no later than January 3, 2020;v) Response to Expert Witness Statement no later than January 3, 2020;
4. An Order that the motion be held in writing or electronically pursuant to Rules 17.5, and 17.6 of the TLAB Rules of Practice and Procedure;
5. An Order that the time required by the TLAB Rules for the filing of this motion be abridged, if necessary, pursuant to Rules 4.4, 4.5, 17.1, and 17.6 of the TLAB Rules; and
6. Any other relief that Counsel may request and the TLAB may permit.

Notice of Motion Form 7

Part 4: On the grounds that:

(State the reasons and grounds using numbered paragraphs and reference any supporting Affidavits identified in Part 6 or materials filed listed in Part 5)

1. The Appellant requires an extension of the filing deadlines set out below to accomodate the timelines of its expert witness;
2. The persons with Party status on this appeal, being the Appellant and the responding Party, the City of Toronto (collectively, the "Parties") consent to the relief sought on this motion. There are no other persons or individuals with party or participant status in this proceeding.
3. In the interest of having a full and fair proceeding, and on consent of the Parties, the Appellant requests the TLAB to extend the Parties' filing deadlines as follows:
 - i) Document Disclosure due no later than December 23, 2019;
 - ii) Witness Statement due no later than December 23, 2019;
 - iii) Expert Witness Statement due no later than December 23, 2019;
 - iv) Response to Witness Statement due no later than January 3, 2020;
 - v) Response to Expert Witness Statement due no later than January 3, 2020;
4. The Parties agree to the above-noted revised filing deadlines and that they will be ready to proceed with the hearing as scheduled on January 9, 2020. As a result of the Parties' mutual agreement to the relief sought, no prejudice will result if the relief sought is granted;
5. Rules 4.4, 4.5, 17.1, 17.5, and 17.6 of the TLAB Rules of Practice and Procedure;
6. The Appellant relies on the supporting affidavit of Danielle Mallozzi affirmed December 6, 2019, the exhibits attached thereto, and TLAB Rules of Practice and Procedure 4.4, 4.5, 17.1, 17.5, and 17.6. All of which is respectfully submitted.