

DECISION AND ORDER

Decision Issue Date Friday, February 07, 2020

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): CITY OF TORONTO, BEVERLY CAREY

Applicant: ACTION PLANNING CONSULTANTS

Property Address/Description: 95 JAMES ST

Committee of Adjustment Case File: 18 172843 WET 06 MV

TLAB Case File Number: 19 230369 S45 03 TLAB

Last Submission date: Thursday, January 10, 2019

DECISION DELIVERED BY JOHN TASSIOPOULOS

APPEARANCES

Name	Role	Representative
Action Planning Consultants	Applicant	
1882291 Ontario Inc.	Owner/Party	Amber Stewart
City of Toronto	Appellant	Derin Abimbola/Lauren Pinder
Patrick and Beverly Carey	Appellant	
Judy Gibson	Party	
David Godley	Expert Witness	
Donna Donald	Participant	
Elizabeth Edwards	Participant	
Ruth Weiner	Participant	

Name	Role	Representative
Christine Mercado	Participant	
Steve Vella	Participant	

INTRODUCTION

This is a decision on a Motion filed on January 10, 2020 by Patrick Carey to adjourn the hearing date scheduled for February 7, 2020. Patrick Carey is an Appellant to the Committee of Adjustment (COA) decision to approve variances associated with the second storey addition for 95 James Street, dated September 12, 2019.

Patrick Carey's Motion requests an adjournment of the Hearing date as they will be out of the country and not available. In the written Motion, it is explained that several attempts had been made to contact the Applicant with respect to adjourning the date as per TLAB Rule 17.2, which would allow for adjournment of the Hearing upon consent of the Parties. The lack of response from the Applicant led to the Patrick Carey's Notice of Motion to adjourn the Hearing date.

The other Appellant in the matter, the City of Toronto (City), through their counsel Laura Pinder, consented to the adjournment request in their Response to the Motion on January 13, 2020 and had also previously consented to the request to adjourn the Hearing date, by email, on November 7, 2019. The Long Branch Neighbourhood Association (LBNA) consented to the adjournment request in their Response to the Motion on January 17, 2020.

BACKGROUND

The Appellant, Patrick Carey, request that the Hearing date be adjourned because they will not be available and out of the country during the hearing date assigned. Amongst the material submitted with the Notice of Motion was the email sent by the Appellant to the TLAB, Parties and Participants, on November 6, 2019, indicating they would not be able to attend the February 7, 2020 Hearing date. The Affidavit of Patrick Carey filed with the Notice of Motion outlined a timeline of activity prior to, and the reasons for, the Motion to adjourn the Hearing. Both the City and the LBNA filed responses to the Motion as noted in the introduction, consenting to the adjournment. There was no response filed to the Notice of Motion by the Applicant.

The Motion was considered in written form on the date provided, January 22, 2020. This is authorized by TLAB's Rule 17.5 noting that the Motion may be heard by written submission and the Adjournments Rules 23.1, 23.2, 23.3 and 23.4 of the TLAB Rules of Practice and Procedure (May 6, 2019).

MATTERS IN ISSUE

Are the reasons for the adjournment reasonable?

If the adjournment is not granted to the Appellant, will it compromise their interest in a full and fair proceeding?

Will an adjournment cause or contribute to any existing or potential harm or prejudice to Parties, Participants and other Persons?

JURISDICTION

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5, Adjournments in accordance with Rules 23.1, 23.2, 23.3 and 23.4, and Extension or Reduction of Time Rules 4.4, 4.5 and 4.6 of the TLAB Rules of Practice and Procedure (May 6, 2019). These provide that the TLAB is free to extend the dates for the submission of disclosure documents.

EVIDENCE

Evidence in the form of an affidavit sworn by the Appellant, Patrick Carey, was submitted indicating that the reason for the request for adjournment of the Hearing. It indicated a timeline preceding the filing of the Notice of Motion and the efforts that were made to reschedule the Hearing date with the other Parties in the matter.

The following excerpts from the Affidavit provides an outline by Patrick Carey of the timeline of events leading to the filing of this Motion:

- “4. On Nov 4, 2019, the TLAB issued a Notice of Hearing that identified the scheduled hearing date as Feb 7, 2020.*
- 5. On Nov 6, 2019 Party Carey emailed all Parties, including the Applicant that she was not available on the Feb 7, 2020 date. (exhibit 1 email) Party Carey will be out of the country and unavailable during this time.*
- 6. On Nov 7, 2019, City of Toronto Counsel, Derin Abimbola, consented to the informal request for adjournment and stated that according to TLAB Rule 17.2 if all Parties consent to an adjournment, a motion is not necessary. All Parties including the Applicant were included on the email. No response from the Applicant was received. (exhibit 2 email)*
- 7. On November 8, 2019, TLAB informed Party Carey that they would have to wait until all Parties had identified themselves through a Form 4 Notice of Intention to be a Party/Participant before making a request for adjournment. The deadline for electing to be a Party was December 04, 2019 (exhibit 3 email)*

8. *On December 4, 2019 the Long Branch Neighbourhood Association (the "LBNA") elected to be a Party to the appeal through submission of Form 4 to TLAB. The LBNA consented to the request to adjourn via email. (exhibit 4 email)*
9. *On Dec 13, 2019, Lauren Pinder, City of Toronto Solicitor sent an email to all Parties and provided four (4) adjournment dates provided by TLAB. (exhibit 5 email) The dates provided were Friday, April 03, 2020, Thursday, April 16, 2020, Monday, April 20, 2020 and Friday, April 24, 2020. The LBNA and Party Carey were unable to come to a consensus using these dates due to work commitments and conflicting TLAB hearing dates. No response from the Applicant was received.*
10. *On December 19, 2019 all Parties received a notice from TLAB that new dates would be provided to the City of Toronto. (exhibit 6 email)*
11. *On December 23, 2019 City of Toronto Counsel, Derin Abimbola canvassed all Parties as per TLAB Rule 17.2 with new hearing date options she received from TLAB earlier that day, with direction to respond no later than December 27, 2019 at 12 noon. The dates provided were Friday, May 08, 2020, Monday, May 11, 2020 and Thursday, May 14, 2020 (exhibit 7 email)*
12. *On December 24, 2020, the LBNA and Party Carey agreed to a hearing date of May 8, 2020 and communicated this to Ms. Abimbola's assistant, Kristine Lo and all Parties as per her direction December 26, 2020. In turn, Ms. Lo advised TLAB staff. (exhibit 8 email)*
13. *On Dec 30, 2019, TLAB issued a new Notice of Hearing that identified the scheduled hearing date as May 8, 2020.*
14. *Later on Dec 30, 2019 Lauren Pinder, City of Toronto clarified in an email that the Applicant had not responded to the request for adjournment and therefore the Applicant/Owner had not provided their consent to the date of May 8, 2020 or provided their position on the request for the adjournment more broadly (exhibit 9 email).*
15. *Shortly after this clarification was made, TLAB staff emailed a notice, vacating the May 8, 2020 date and reinstating the Feb 7, 2019 date.*
16. *On Dec 31, 2019, failing to receive a response from the Applicant which would allow for an adjournment upon consent as per TLAB Rule 17.2, Party Carey requested a date for a Motion to be heard administratively from TLAB to formally adjourn this matter to a later date that is agreeable to all Parties." (Affidavit (Form 10) of Patrick Carey, January 9, 2020)*

The Affidavit further noted Party's right to attend the hearing and present evidence in support of its position, in an administrative proceeding, is a matter of procedural fairness and natural justice.

ANALYSIS, FINDINGS, REASONS

In the review of the Motion and the attachments provided by the Appellant, Patrick Carey, it is evident that they had informed all Parties and Participants, and TLAB shortly after they received the Notice of Hearing that they would not be available. It is also evident from the exhibits attached to the Motion that both the City and the LBNA had not only agreed to adjourning the Hearing date but that they had attempted to coordinate an alternative Hearing date for May 8, 2020.

During the course of the engagement by the Appellant and other Parties to finding and agreeing on alternative Hearing dates, it appears that the Applicant never responded and was silent, even though the Applicant was copied throughout the time between November 6 and December 31, 2019. Furthermore, a review of the case file revealed that the Applicant had also not submitted a Response to the Motion.

Given the above evidence and that a review of the materials suggests that a concerted effort was made by the Parties to finding an alternative Hearing date, with the exception of the Applicant, I find that the Motion to adjourn the hearing is reasonable, it is in the interest of conducting a full and fair proceeding, and it does not cause or contribute to any existing or potential harm or prejudice to the Parties and Participants.

DECISION AND ORDER

The Motion to adjourn the Hearing of February 7, 2020 is granted.

The TLAB is directed to vacate this date and to canvass the Parties with respect to a new Hearing date.

Upon confirming a new Hearing date, a new Notice of Hearing is to be issued along with associated due dates for submissions and disclosure of documents.

X

John Tassiopoulos
Panel Chair, Toronto Local Appeal Body

