

# MOTION DECISION AND ORDER

**Decision Issue Date**      Thursday, March 05, 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): 1362882 ONTARIO LTD

Applicant: HICKS DESIGN STUDIO

Property Address/Description: 1 LAKE CRES

Committee of Adjustment Case File: 19 143904 WET 03 MV

**TLAB Case File Number: 19 248474 S45 03 TLAB**

**Last Submission Date:**    Wednesday, February 19, 2020

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

Name	Role	Representative
Hicks Design Studio	Applicant	
1362882 Ontario Ltd	Owner/Appellant	Amber Stewart
David Engel	Party	
Anastasia Jakubasz	Party	
David McKay	Expert Witness	
William Hicks	Expert Witness	
Robert Brown	Expert Witness	
Anne Thorburn	Participant	
Patricia Clarkson	Participant	

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Name	Role	Representative
Sonya Elliott	Participant	
James Elliott	Participant	
Mary Jane Benedetti	Participant	

## **INTRODUCTION**

This matter involves the owners intend to construct a single detached residential dwelling at 1 Lake Crescent (subject property) in the former Long Branch Community, now the City of Toronto (City).

On the last day for the filing of materials, counsel for the Owner/Appellant served a Notice of Motion requesting extra time be assigned the disposition of the matter.

The Motion was accompanied by the affidavit of Anthony Soscia of the solicitor's office, sworn February 7, 2020.

The Hearing of this matter is set for March 17, 2020.

There were no responses to the Notice of Motion.

The Motion requested that its consideration be in writing.

## **BACKGROUND**

The Notice of Hearing of the Toronto Local Appeal Body (TLAB) was issued November 27, 2019. It is apparent from the Committee of Adjustment (COA) file, posted on the TLAB website, that considerable and diverse interest had been exhibited in the Application from the outset.

The TLAB has a practice, when notified of a requested extension, that variance appeals exceeding three (3) days and combined variance/consent files exceeding five (5) days requested, be the subject of a Pre-Hearing Conference under Rule 21 of the *TLAB Rules of Practice and Procedure* (Rules).

## **MATTERS IN ISSUE**

While it is prudent to raise advance notice of an intended extension request, at issue is what direction can be taken in advance of the pending Hearing.

## JURISDICTION

The Rules of the TLAB provide for their application (Rule 2) and the bringing of Motions (Rule 17 and Rule 24), and the Practice Directions address written Motion requests.

## EVIDENCE

The Affidavit filed in support of a request to schedule a three day sitting does not support an adjournment of the set Hearing date nor suggest a requirement for contiguous dates.

It states, at paragraph 4 of the Notice:

4. There are three Parties and five Participants to the matter. Three expert witnesses statements, and six party or participant witness statements have been filed. Over 50 documents (including substantial document compilations) have been collectively filed by the Parties and Participants to the matter.

The TLAB notes that as at the date of the issuance of this disposition a considerable number of additional Responses and Replies to Witness Statements have been filed. The TLAB document record stands at 131 entries, a number of which include extensive pages of information and submissions.

The moving Party advances the 'expectation that three hearing days will be reasonably required to complete the matter in its entirety'.

The scheduling requests states as well:

7. As such, we kindly request that the TLAB schedule two more hearing days following March 17, 2020 (Hearing day #1) in consultation with the Parties regarding their availability for the abovementioned matter.(underlining added)

## ANALYSIS, FINDINGS, REASONS

While it is regrettable that the Applicant and no other Party identified the need for additional hearing time earlier, or sought consensus on agreed dates, the TLAB agrees there is a likelihood the sitting may exceed the time presently allocated on March 17, 2020.

To that extent, tabling the matter by way of formal Motion was prudent and allows for direction to advance the matter in the most timely and cost effective manner possible. There were no objections received.

TLAB appointments are fixed and Parties and Participants are expected to meet the commitments set out in the Notice of Hearing. As this is a variance appeal only, the

expectation is that a one day sitting should be sufficient. It is acknowledged that three (3) claimed professional witnesses and five (5) registered Participants appears auspicious and a challenge to completion, despite the advance preparation and identification of positions. To date, those preparation obligations have been largely respected and can continue to be so.

On the admission of the Moving Party, it is premature to now determine the need or extent of additional time to hear the evidence on this matter.

Certain items can be accomplished and the co-operation of all is appreciated by the TLAB.

On that expectation, the following directions shall apply.

## **DECISION AND ORDER**

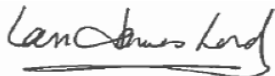
1. At the outset on March 17, 2020, the Chair will:
  - a. Request the identification of any additional special issues requiring a Ruling;
  - b. Require the Parties to confine Opening Remarks to five (5) minutes, if any are felt necessary, and honed to the identification of issues and differences, but not the evidence to be called thereon;
  - c. Require the Applicant to first call evidence in support of the requested variances with professional planning evidence limited to two (2) hours and any additional or other evidence in support to one (1) hour.
  - d. Require Parties in opposition to each limit their professional planning evidence to one (1) hour and any other evidence of each Party to one (1) hour. This may require experts opposing the Application to meet and distill evidence to the point of limiting repetition.
  - e. Participants, as directed below, are requested to be concise and focused in elaborating upon areas of concern, adopting rather than repeating elements of common concern, where possible.
  - f. The Applicant shall have the right of reply.
  - g. 'Borrowing' between time allocations is appropriate; cross-examination/questioning will be limited by relevance and the avoidance of repetition in questions and responses.
  - h. Shuffling the witness line-up to accommodate schedules is supported.
  - i. Tender dates for an extended sitting, to be canvassed during the day through counsel or Representatives.
2. Participants are urged to meet or at least scope their evidence in light of the pre-filings on the TLAB website - all to avoid repetition or the dwelling on matters that are no longer germane to the variances requested and being pursued by the Applicant.
3. If, by the end of the day at the latest on March 17, 2020, including an extended sitting to approximately 5 pm, and the matter is not completed, the

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Chair will canvass and set an agreed continuation date, or, failing agreement, set a date or dates for the completion of the matter.

4. Parties and Participants are reminded to refer to Rule 15; namely, that they are required to regularly consult the TLAB website, to use and to remain informed of the materials, including their own, that are pre-filed.

X



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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord