

DECISION AND ORDER

Decision Issue Date: Wednesday, March 4, 2020

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), and section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Hamed Ismailzadeh

Applicant: Rubinoff Design Group

Property Address/Description: 80 Thirty Ninth St

Committee of Adjustment Case File Number: 17 228728 WET 06 CO (B0079/17EYK), 17 228734 WET 06 MV (A0789/17EYK), 17 228731 WET 06 MV (A0790/17EYK)

TLAB Case File Number: 18 152342 S53 06 TLAB, 18 152353 S45 06 TLAB, 18 152350 S45 06 TLAB

Teleconference Hearing date: Tuesday, September 03, 2019

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Glenn Rubinoff Design Group
Appellant	Hamed Ismailzadeh
Appellant's Legal Rep.	Ron Kanter
Party	City of Toronto
Party's Legal Rep.	Matthew Longo
Party's Legal Rep.	Adrienne deBacker
Participant	John Dennis Marshall

Participant	Alexander Donald
Participant	Ester Gomez
Participant	John MacDonald
Participant	Donna Donald
Participant	Dottie Irvine
Participant	Judy Gibson
Participant	Sandre Young MacDonald
Participant	Jacquelyn Wells
Participant	Raymond Wells
Expert Witness	Franco Romano
Expert Witness	Max Dida
Expert Witness	Ian Graham

INTRODUCTION

This decision is in response to a motion by the appellant for permission to introduce new evidence in reply at the recommencement of the hearing of the above matter. The subject of the hearing is a severance and variances to permit the construction of two dwellings.

BACKGROUND

This hearing has continued over a long period of time as a result of the need for adjournments and scheduling problems. At the hearing the opponents raised issues regarding the facades of the proposed dwellings and I raised an issue respecting the impact of the servicing of the dwellings on tree roots.

MATTERS IN ISSUE

The matter in issue is whether new evidence should be allowed in response to these issues raised at the hearing.

JURISDICTION

Under the TLAB Rules of Practice and Procedure I have authority to determine the conduct of hearings, including the admission of evidence.

EVIDENCE

The affidavit evidence submitted by the appellant sets out the evidence to be submitted. It is to be new elevations of the proposed dwellings and an affidavit regarding tree roots. The Long Branch Neighbourhood Association (LBNA) opposed the motion. The City consents to it on a without prejudice basis.

ANALYSIS, FINDINGS, REASONS

While ordinarily the appellant should not be allowed to 'split its case' and introduce evidence after a party in opposition has presented its evidence, in the circumstances of this case before me I believe the evidence should be allowed. The LBNA has ample opportunity to review the evidence and thus there is no real issue of surprise. Moreover if it wishes to submit evidence in response to this evidence, I will so allow provided it is relevant and probative. As I have often stated, I wish to hear all the evidence from all parties provided no party is caught by surprise or dealt with unfairly. I find it would not be a surprise or unfair to allow the evidence provided those in opposition can respond if they find it necessary to do so.

DECISION AND ORDER

The motion is granted and the evidence submitted in this motion may be submitted at the hearing.

Any responding evidence shall require a witness statement served on the Parties and the TLAB at least three (3) days prior to the recommencement of the hearing.

X 

S. Makuch
Panel Chair, Toronto Local Appeal