

INTERIM DECISION AND ORDER

Decision Issue Date Friday, July 31, 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): MICHAEL CARPINO

Applicant: LEMCAD CONSULTANTS

Property Address/Description: 97 YARDLEY AVE

Committee of Adjustment Case File: 19 169522 STE 19 CO, 19 169523 STE 19 MV, 19 169524 STE 19 MV

TLAB Case File Number: 19 265118 S53 19 TLAB, 19 265119 S45 19 TLAB, 19 265120 S45 19 TLAB

Hearing date: Sunday, April 21, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES	ROLES	REPRESENTATIVE
LEM CAD CONSULTANTS	APPLICANT	
IET THAT	OWNER	
MICHAEL CARPINO	APPELLANT	AMBER STEWART
FRANCO ROMANO	EXPERT WITNESS	
GEORGE EASTMAN	PARTICIPANT	
DEV SINGH	PARTICIPANT	
HEATHER LIBERTY	PARTICIPANT	
STAN BURROWS	PARTICIPANT	

INTRODUCTION AND BACKGROUND

Michael Carpino is the owner of 97 Yardley Ave, located in Ward 19 (Beaches-East York) of the City of Toronto. He applied to the Committee of Adjustment (COA) to sever the lot into two parts, and approval of variances to build a new two-storey single family detached dwelling with an integral garage, on each of the two lots. The COA heard the Application on December 17, 2019, and refused the application in its entirety. The Applicant appealed the decision to the Toronto Local Appeal Body (TLAB) on December 27, 2019- the TLAB scheduled hearings on April 21, 2020, and April 28, 2020. It may be noted that the Applicant, also retained Ms. Amber Stewart, a lawyer, and Mr. Franco Romano, a planner, to represent him before the TLAB.

Four of the neighbours, Mr. George Eastman of 91 Yardley Avenue, Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, elected for Participant Status, after the last date for Notice of Intention, or February 10, 2020 in this case. They also provided Witness Statements, after the last date for filing Statements, or March 9, 2020, in this case.

As a result of COVID, all Hearings after March 16, 2020 were postponed; consequently the Appeal could not be heard in the month of April 2020, as originally planned.

The Appeal respecting 97 Yardley was subsequently identified as a case that could proceed by way of an Electronic Hearing. On July 10, 2020, Ms. Stewart, Counsel for the Appellant, sent a letter to the TLAB stating that the four neighbours identified earlier in this Section had elected for “party status”, after the deadline for election. She added that as of July 10, 2020, a Witness Statement had been received only from Mr. Eastman.

Ms. Stewart stated that in response to her enquiry about participation in an Electronic Hearing, Messrs. Singh and Burrows, and Ms. Liberty, were not supportive of the request, though they had not provided any reasons. Mr. Eastman said that he did not consent to a remote Hearing, because he had concluded that he did not have adequate resources based on his answers to questions in the TLAB’s Technological Survey.

Ms. Stewart reiterated her client’s interest in an electronic Hearing, and said “Given the fact that there are no expert witnesses other than Mr. Romano, we are of the view that this matter is a good candidate for an electronic hearing”. She suggested that the TLAB have “appropriate accommodations” in place to help the neighbours testify in an Electronic Hearing.

MATTERS IN ISSUE

The question that needs to be answered is:

- Should the TLAB proceed with an Electronic Hearing to hear the Appeal respecting 97 Yardley Ave?

- Can the neighbours be given Participant Status in the Appeal because they missed the deadlines provided in the Notice of Hearing to elect for Participant status, and filing Witness Statements?

JURISDICTION

The TLAB relies on its Rules of Practice and Procedure (the” Rules”) to make decisions on procedural matters. The following Rules are recited because they are of specific interest to the question before me:

2.1 The TLAB is committed to fixed and definite dates. These Rules shall be interpreted in a manner which facilitates that objective.

2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.

ANALYSIS, FINDINGS, REASONS

It is important to note that the neighbours did not send their election forms in by the last date for notification, i.e. February 10, 2020. While the Appellant states that the neighbours elected to be parties, my review of the documentation indicates that all of them have elected to be Participants. The letter from the Appellant does not indicate if they object to the neighbours being given Participant status. Given that they have not waived their right to object to granting the neighbours Participant Status, and the late submissions of forms, the TLAB has to make a determination on whether the neighbours can be given Participant Status in the proceeding.

The Rules recited above state clearly that the TLAB is committed to fixed and definite dates, which means that the neighbours should have elected for Participant status before the deadline of February 10, 2020. The TLAB has to provide relief from the Rules to allow the neighbours Participant status in the Hearing, irrespective of the latter’s format. Since Rule 2.2 provides for liberal interpretation of the Rules, it is important that the neighbours explain to the TLAB why they could not meet the deadlines for electing to be Participants, or filing Witness Statements in time. The TLAB will make a decision on whether the neighbours can be provided Participant Status after obtaining their responses.

In response to a query from the Appellant about the possibility of an electronic Hearing, three of the four neighbours have indicated that they are not interested in an electronic Hearing, without providing reasons. I understand that Mr. Eastman, on the other hand, has completed the Technological Survey, and has indicated that he does not have the resources to proceed with an electronic Hearing.

Mr. Burrows, Ms. Liberty and Mr. Singh are asked to complete TLAB’s Technological Survey, and state why they could not meet the deadlines for Notice of Intention and filing Witness Statements, as stated in the Notice of Hearing dated January 9, 2020.

Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
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S45 19 TLAB

The deadline for providing this information to the TLAB is the end of day on August 14, 2020.

The TLAB is willing to explore the option of holding a teleconference to hear the Appeal, if the neighbours identified earlier in this Section, can participate in such a proceeding. It is important that the neighbours Ms. Liberty, and Messrs. Eastman, Burrows and Singh provide fulsome reasons for their inability to participate if they are not prepared to proceed with a teleconference.

The Appellant needs to be able to serve the neighbours with hard copies of their Expert Witness Statements, Plans and Elevations, and other relevant documentation, if the TLAB decides to proceed with a teleconference. The TLAB needs to be made aware if the Appellants have any issues with making hard copies available to the neighbours.

The neighbours, as well as the Appellant, are asked to answer the stated questions, and respond to the TLAB by the end of day on August 14, 2020.

I summarize below the information that needs to be provided to the TLAB by the end of day on August 14, 2020

- 1) Mr. George Eastman of 91 Yardley Ave, Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, are asked to explain why they could not complete their Notice of Intention by February 10, 2020, and their Witness Statements by March 9, 2020.
- 2) Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, are asked to complete TLAB's Technological Survey, and submit the forms to the TLAB by August 14, 2020.
- 3) All the neighbours who want to be Participants (Mr. George Eastman of 91 Yardley Ave, Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue) have to respond to the question of to their participating in a Hearing, to be held by way of teleconference. They have to provide fulsome reasons about their inability to participate in a Hearing by teleconference, in case they answer the question in the negative.
- 4) The Appellant needs to indicate if they can serve their submission(including the Witness Statement, building Plans and Elevations, and other documents)in the form of hard copies, on the neighbours, in case the latter are accorded Participants Status, and the TLAB decides to proceed by way of a teleconference to hear the Appeal. Reasons have to be provided in case the Appellant cannot make the submission available to the neighbours by way of hard copy.

The information obtained by the TLAB, on or before August 14, 2020, will be utilized to make a decision about next steps, including according the neighbours Participant status, and decisions on how to hear the Appeal, including electronic formats, or an in person format.


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- 1) Mr. George Eastman of 91 Yardley Ave, Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, are asked to explain why they could not complete their Notice of Intention by February 10, 2020, and their Witness Statements by March 9, 2020.
- 2) Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, are asked to complete TLAB's Technological Survey, and submit the forms to the TLAB by August 14, 2020.
- 3) Mr. George Eastman of 91 Yardley Ave, Mr. Stan Burrows of 95 Yardley Avenue, Ms. Heather Liberty of 90 Yardley Avenue, and Mr. Dev Singh of 88 Yardley Avenue, are asked if they can participate in a Hearing, to be held by way of teleconference, and provide fulsome reasons about their inability to participate in a Hearing by teleconference, in case their answer is "no".
- 4) The Appellant needs to indicate if they can serve their submission (including the Witness Statement, building Plans and Elevations, and other documents)in the form of hard copies, on the neighbours, in case the latter are accorded Participants Status, and the TLAB decides to proceed by way of a teleconference to hear the Appeal. Reasons have to be provided in case the submissions cannot be made available to the neighbours by way of hard copy.

The deadline to make this information available to the TLAB is the end of the day on August 14, 2020. The TLAB will utilize this information to make decisions about next steps about who can participate in the Appeal, and in what format will the Appeal be heard.

The TLAB can be spoken to should any issues arise with respect to the questions above.

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body