

INTERIM DECISION AND ORDER

Decision Issue Date Monday, August 24, 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

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES	ROLES	REPRESENTATIVE
LEMCAD 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

The Background and circumstances of the Appeal respecting 97 Yardley Ave., and the request to hear the matter by way of a videoconference, are discussed in my Interim Decision dated 31 July, 2020. On 18 August, 2020, the TLAB Staff forwarded the replies by the neighbours in response to my Interim Decision dated 31 July, 2020. The neighbours are:

- 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.

The TLAB also forwarded the responses filed by the lawyer for the Appellant, Ms. Amber Stewart.

On the basis of the responses received by me, I understand that two of the four respondents had critical family issues to address in early March, preventing them from electing to be a Participant by the deadline of March 9, 2020.

Responding to the question about having the technological infrastructure to participate in a videoconference, all the four neighbours replied in the negative. Some indicated that they can participate in a teleconference, while others stated that they don't have access to a quiet area in their house to participate in any conference. All the four respondents were in favour of participating in a Hearing in person.

Counsel for the Appellant, Ms. Stewart responded to my question about providing hard copies of the Submissions to the respondents because they could not access the material online. She said that her client could "be directed to provide the physical materials to persons who are participating by telephone, or who are unable to access a copy of the materials on a desktop or laptop.

Ms. Stewart also stated that her client would "prefer the opportunity to hold the hearing via videoconference on Webex, with at least the Applicant and the TLAB on video, and that any parties or participants who do not prefer to participate by video could participate by telephone". The request was rationalized in the light of public interest because "this type of process would best address the public interest in holding a hearing expeditiously and in the most effective manner possible, because we will be able to review the evidence on screen contemporaneously (as would occur with an in person hearing). However, it would still balance the interests of any person without the technical ability to proceed via video, by accommodating their request to participate by audio only"

MATTERS IN ISSUE

The questions that need to be answered are:

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S45 19 TLAB

- Can the respondents be accorded Participant Status in the Appeal in view of their explanations about missing the deadline?
- Can the Appeal respecting 97 Yardley Ave. proceed by way of a teleconference, or a Hearing in person?

JURISDICTION

The TLAB relies on its Rules of Practice and Procedure (the” Rules”) to make decisions on procedural matters. :

ANALYSIS, FINDINGS, REASONS

I am sympathetic to the situation of respondents who could not elect for Party or Participant Status, because of family crises, and believe that they should be allowed to participate in the Hearing. In the interests of an inclusive Hearing, I would not like to exclude the other two respondents from participation.

I herewith permit all the four neighbours , Messrs. Singh, Eastman, Burrows and Ms. Liberty to participate in the Hearing as Participants. Their Witness Statements will not be excluded from being used in the Appeal Hearing, notwithstanding their missing the appropriate deadline for filing.

I would encourage the Participants to contact the TLAB Staff for advice about the actual Hearing, and inform themselves about the Rules governing Participants at the Hearing.

The other question before me is to make a decision on whether the Hearing can be heard by way of teleconference, or in person.

As stated earlier, all the Respondents have made it clear that they do not have access to appropriate technology to participate in a videoconference. The Appellant has stated that the Hearing can be held by way of “a hybrid process”, where the TLAB and the Appellant can participate by way of video, while the Participants can participate in the discussion by way of telephone.

However, I am concerned about using the hybrid option for a couple of reasons, stated below:

Firstly, no information is available to me about the comfort level of the Participants with this methodology, because it was not discussed, nor canvassed with them.

I am also concerned, by the resulting asymmetry of the resulting Hearing, where some can participate by way of videoconference, and others by way of a telephone. I am concerned that some can simultaneously access visual and aural information, while the others are restricted to aural information alone, which could impact their ability to react to the information in an equitable fashion. I find that the “hybrid” mode of Hearing may not align with equity principles, thereby contradicting Public Interest.

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I find that a Hearing in Person best serves the Public Interest in this Appeal. I believe that it would be appropriate to set aside **one full Hearing day to complete this Appeal**, with the stipulation for a second day, if required.

By way of information, I have had discussions with the TLAB staff, and am advised that the TLAB will begin to schedule Hearings –in-Person “within a short period of time”. I have drawn the attention of the TLAB staff to the Appeal respecting 97 Yardley, and have asked that a Hearing-In-Person be scheduled as soon as possible.

I express my sincere appreciation of the Appellant’s willingness to make paper copies available to the Participants, and am sensitive to their observation about the expenses involved if paper copies have to be made available. Consequently, no finding is made on this question.

I would also encourage the Appellant and the Participants to provide evidence at the Hearing on the basis of documents **submitted prior to 24 August, 2020**, or the date on which this Decision is served on the Appellant, and the Participants. Submitting documents at the Hearing, or shortly before the Hearing, may prevent others from reviewing the late submissions, and consequently be unprepared to utilize them at the Hearing.

INTERIM DECISION AND ORDER

- 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 accorded Participant Status in the Appeal respecting 97 Yardley Avenue, before the Toronto Local Appeal Body. The Witness Statements submitted by them can be relied upon for evidentiary and cross-examination purposes.
- 2) The Appeal respecting 97 Yardley will proceed as a Hearing-in-person. The TLAB may assign one full Hearing day to complete this Appeal..

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body