

DECISION AND ORDER

Decision Issue Date Thursday, October 08, 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): BRENDAN CHARTERS

Applicant: EURODALE DEVELOPMENT INC

Property Address/Description: 31 ROSLIN AVE

Committee of Adjustment Case File: 19 258063 NNY 15 MV (A0746/19NY)

TLAB Case File Number: 20 124166 S45 15 TLAB

Webex date: Tuesday, October 6, 2020

DECISION DELIVERED BY D. LOMBARDI

APPEARANCES

Appellant	BRENDAN CHARTERS
Party	John McRae Pattison
Party's Legal Rep.	Jennifer Meader
Party	City of Toronto
Party's Legal Rep.	Lauren Pinder
Applicant	Eurodale Development
Owner	Mc Ginley Bros Inc

INTRODUCTION

This matter was convened by way of a virtual (Webex) teleconference and was scheduled as a Prehearing Conference update to advise the Parties as to how the matter of the variance appeal respecting 31 Roslin Avenue (subject property) might proceed.

The TLAB issued a Notice of Electronic Prehearing to the Parties on September 30, 2020.

Present on the teleconference were the Appellant, Brendan Charters, by telephone, his legal representative, Joe Hoffman, and the Applicant's land use planner, Sean Galbraith. Also in attendance were Lauren Pinder, counsel for the City of Toronto (City), and Jennifer Meader, counsel for John Pattison, a resident at 33 Roslin Avenue adjacent to the subject property and a Party in the matter.

There were no other Parties or Participants present.

BACKGROUND

The appeal of this matter was originally scheduled to be heard by the TLAB on June 24, 2020. In the ensuing period between setting the Hearing date and the return date, the world encountered a global pandemic in the form of COVID-19. As a result, effective as of that date, the TLAB ordered cessation of all Hearing events and the suspension of filing timelines, pursuant to the Government of Ontario Emergency Order, Ontario Regulation 73/20.

This interval, in effect a 'Suspension Period', was initially anticipated to end on May 29, 2020 but was further extended several times by the Tribunal and finally revoked on August 14, 2020.

The TLAB, subsequently, issued a Notice of Postponement for the subject appeal on April 24, 2020 adjourning the matter indefinitely.

During the 'Suspension Period' the TLAB had recognized the possibility of undertaking limited 'virtual or remote' Hearing events on consent and where appropriately supported at the discretion of the presiding Member. The Ontario Courts have recognized that 'virtual or remote' proceedings are appropriate and have decreed that a properly constituted 'virtual' session meets the standard of natural justice and procedural fairness.

The subject appeal was reviewed and for various reasons including the approval being requested, the number of elected Parties and Participants, and the complexity of

accommodating the Hearing, the Tribunal determined that the matter could not be accommodated as an electronic hearing event.

Following cessation of the 'Suspension Period' on August 14, 2020, the TLAB set about the daunting task of rescheduling Hearings previously postponed during that period, including the subject application, as well as new applications received in a 'first in, first out' approach.

In performing this administrative exercise, TLAB staff advised the presiding Member sometime in early September that prospective dates for an in-person Hearing for the subject application in 2020 were no longer available and that staff would be reviewing rescheduling the subject appeal sometime in the first quarter of 2021.

In the interim, on August 20, 2020, the TLAB received email correspondence from David Bronskill, the Appellant's legal representative, requesting that the matter be scheduled for a 3-day 'virtual' Hearing. He noted in his email that this request was on the consent of the solicitors of the other Parties who also confirmed their position on this requested to the Tribunal in writing.

After carefully reviewing the file, the presiding Member agreed to the request and directed TLAB staff to canvas the Parties and Participants for an assessment of their technological ability to participate in a remote Hearing and to secure Hearing dates in either November or December of 2020.

Following consultation with the Parties, and on consent, three Hearing dates were agreed to and acknowledged as available by the TLAB – December 9, 2020, December 15, 2020, and December 17, 2020.

However, before these dates can be confirmed the TLAB must issue a new Notice of Electronic Hearing with the requisite exchange due dates, pursuant to the TLAB's Rules of Practice and Procedure (Rules).

Those new Hearing dates, however, now impact the due date timelines required by the TLAB's Rules and therefore become problematic and must be revised accordingly to accommodate adequate filing dates. This issue must be resolved before a new Notice can be issued and the limitation clock of the Rules resumes.

Consequently, the purpose of the teleconference was to discuss revised due dates, achieve consensus on condensed due dates, and to discuss other, minor procedural matters related to the proceeding.

MATTERS IN ISSUE

At issue is whether the Parties will agree to the condensed due dates as required by the TLAB's Rules to accommodate the rescheduled Hearing dates, above recited.

JURISDICTION

The TLAB's Rules stipulate requisite due dates specified in each Notice of Hearing issued by the Tribunal; the TLAB is committed to fixed and definite dates and the Rules are interpreted in a manner which facilitates this objective.

However, pursuant to TLAB Rules 2.2., and 2.3, the Rules allow the presiding Member discretion to interpret the Rules liberally to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. Additionally, the Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of any Person.

ANALYSIS, FINDINGS, REASONS

The TLAB is proposing the following timelines for due dates:

- *Applicant Disclosure* – **10 days** instead of 20 days (Rule 11);
- *Notice of Intention to Elect Party or Participant Status* – **15 days** instead of 30 days (Rules 12 and 13, respectively);
- *Document Disclosure* – **35 days** instead of 60 days (Rule 16);
- *Witness Statement* – **35 days** instead of 60 days (Rule 16.4);
- *Response to Witness Statement* – **50 days** instead of 75 days (Rule 16.5);
- *Reply to Response to Witness Statement* – **56 days** instead of 85 days (Rule 16.5);
- *Participant Statement* – **35 days** instead of 60 days (Rule 16.5);
- *Expert Witness Statement* – **35 days** instead of 60 days (Rule 16.6);
- *Response to Expert Witness Statement* – **50 days** instead of 75 days (Rule 16.9); and
- *Reply to Response to Expert Witness Statement* – **56 days** instead of 85 days (Rule 16.10).

Mr. Hoffman advised that prior to this teleconference, he had spoken with the other Parties to canvas due date timeframes acceptable to each. He acknowledged that the timelines discussed previously with and agreed to by the Parties were similar to those now being proposed by the TLAB, above noted, and confirmed support for the revised TLAB timelines now being proposed by the Tribunal. The other Parties also verbally acknowledged agreement with the proposed due date timelines.

With respect to other procedural matters, the presiding Member acknowledged that although the original Hearing had been scheduled as a one-day event, the Parties were now requesting a proceeding involving three days. In light of this request, and to avoid any possibility that additional Hearing days will be necessary, the Parties were advised that closing statements will only be accepted in written form, no more than five (5) pages in length (one sided), and are to be filed with the Tribunal no later than seven (7) calendar days following the completion of the Hearing event.

DECISION AND ORDER

The Decision and Order on this matter is as follows:

The three 'virtual' Hearing dates of December 9, December 15, and December 17, 2020 for the subject appeal are confirmed. TLAB staff is directed to issue a new Notice of Electronic Hearing with the above recited dates consistent with the deadline timelines agreed to by the Parties, above recited.

Closing statements from the Parties in this matter, which are typically allowed prior to the last Hearing day in a proceeding, will be delivered if required following completion of the scheduled Hearing dates in written form, no more than five (5) pages in length, and are to be filed with the TLAB no later than seven (7) calendar days from the conclusion of the subject proceedings.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body