

DECISION AND ORDER

Decision Issue Date Monday, December 21, 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): YOUNGHEE MIDDLETON

Applicant(s): AMBIENT DESIGN LTD

Property Address/Description: 95 and 97 FORTIETH ST

Committee of Adjustment File

Number(s): 19 224770 WET 03 MV / 19 224771 WET 03 MV

TLAB Case File Number(s): **20 127187 S45 03 TLAB, 20 127188 S45 03 TLAB**

Motion Hearing date: Monday, December 21, 2020

DECISION DELIVERED BY A. Bassios

APPEARANCES

| NAME | ROLE | REPRESENTATIVE |
|---------------------|-------------|-------------------|
| AMBIENT DESIGNS LTD | APPLICANT | |
| YOUNGHEE MIDDLETON | APPELLANT | |
| LONG BRANCH | PARTY | |
| NEIGHBOURHOOD LTD | | |
| 2713949 ONTARIO INC | PARTY | RUSSELL CHEESEMAN |
| CHRISTINE MERCADO | PARTICIPANT | |
| ALEXANDER DONALD | PARTICIPANT | |
| JOHN MACDONALD | PARTICIPANT | |
| RUTH WEINER | PARTICIPANT | |
| RANDY MCWATTERS | PARTICIPANT | |
| LIZ EDWARDS | PARTICIPANT | |
| STEVEN VELLA | PARTICIPANT | |
| BRITTANY MONTEMURRO | PARTICIPANT | |

INTRODUCTION AND BACKGROUND

This matter arises by way of a Written Motion requesting a Written Hearing.

On February 27, 2020, the Etobicoke York Panel of the Committee of Adjustment (COA) issued its decision approving, with conditions, variances to construct two new detached dwellings at 95 and 97 Fortieth Street, (subject properties).

The subject properties are located in the Village of Long Branch in Etobicoke.

Younghee Middleton, (Appellant) filed a Notice of Appeal of the Variance Decision on July 11, 2020 to the Toronto Local Appeal Body (TLAB). The TLAB has set a Hearing date of March 25, 2021 to hear the appeal.

On November 24, 2020, the TLAB received correspondence from Mr. Russel Cheeseman, Representative for 2713949 Ontario Inc. and 2173948 Ontario Inc., Party to this Appeal, requesting potential dates for an electronic Motion to Dismiss the Appeal for the Subject Properties. January 11, 2021 has been set by the TLAB as the date for the Hearing of a Motion to Dismiss the Appeal. To my knowledge, motion materials have not been filed for this (first) Motion.

On December 4, 2020, TLAB received a *Notice of Motion* (Form 7) and associated Affidavit (Form 10) for a separate Motion from Mr. Cheeseman. The filed Form 7 did not cite the Motion date for this (second) Motion, which had been set by TLAB staff as **December 21, 2020**.

This (second) Motion seeks the delay of dates for the filing of submissions until after the Hearing of the Motion to Dismiss the Appeal scheduled for January 11, 2021. The Motion on January 11th is to be heard as an electronic Hearing event. The Moving Party has served Notice on all Parties and Participants in this matter, excepting Ms. Brittany Montemurro, who filed an intent to elect Participant status only on December 7, 2020, after the deadline for Notice of Intention to be a Participant had passed (November 23, 2020), and after the *Notice of Motion* had been filed by Mr. Cheeseman.

MATTERS IN ISSUE

This Motion seeks to delay the dates for Document Disclosure, Exchange of Witness Statements, Exchange of Expert Witness Statements, Participant Statements, Responses to Witness Statements and Replies to Witness Statements set out in the Notice of Hearing on this matter, to dates subsequent to the Hearing of a Motion set for January 11, 2021.

JURISDICTION

TLAB Rules 17.1 to 17.12 govern, *inter alia*, the filing of Notices of Motion, contents of Motion Material and timelines for Notices of Response and Reply. TLAB Rules 16.1 to 16.13 govern Disclosure and the timelines for filing of documents, including Witness Statements, Responses and Replies.

EVIDENCE

The *Notice of Motion* (Form 7) filed with the TLAB on December 4, 2020 is accompanied by an Affidavit (Form 10) which sets out the facts upon which the Moving Party relies. The Affidavit is sworn by Darlene Hornsby, a legal assistant in Mr. Cheeseman's office, and refers to the Motion date which has been set for January 11, 2021 for the hearing of a different Motion, which she states is for the purposes of determining "that the appellant is not a person who meets the statutory criteria for continuing with the appeal".

Attached to Ms. Hornsby's Affidavit, and marked as Appendix B, is correspondence from the TLAB setting a date, time and location for a Motion to be heard on January 11, 2021. The Affidavit goes on to state that several of the dates for the filing of submissions as per the *Notice of Hearing* for this case predate the date for the Hearing of the Motion on January 11, 2021.

The Moving Party's Motion requests the following:

1. An Order of the Tribunal to delay the dates for Document Disclosure, Exchange of Witness Statements, Exchange of Expert Witness Statements, Participant Statements, Responses to Witness Statements and Replies to Witness Statements set out in the Notice of Hearing in respect of the within matters, to a date subsequent to the Hearing of a Motion set for January 11, 2021.
2. Such further and other relief as counsel may advise and the Tribunal may permit.

In support, the Motion document outlines the grounds for the Motion which are contained in eight (8) paragraphs.

In summary, the relief being sought is a delay of submission due dates until after the January 11, 2021 Motion Hearing, on the assertion that if the Motion relief is granted, the costs to Parties and Participants of preparing materials (for submission to an Appeal that may potentially be dismissed without a Hearing) can be averted. Ms. Hornsby's Affidavit asserts that if the Motion relief were not to be granted on January 11, 2021, there would still be adequate time before the start of the scheduled Hearing on this case for the various requirements of Disclosure and Witness Statement preparation.

Responses to the *Notice of Motion* were received from Christine Mercado, Chair of the Long Branch Neighbourhood Association, and Younghee Middleton, the Appellant in this matter. Both Parties who responded indicate their consent to delay the dates for Document Disclosure, Document Disclosure, Exchange of Witness Statements, Exchange of Expert Witness Statements, Participant Statements, Responses to Witness Statements and Replies to Witness Statements set out in the Notice of Hearing. However, both also stipulated that while they agree to the delay of submissions on this matter, they do NOT consent to the upcoming Motion (January 11, 2021) to dismiss this Appeal.

ANALYSIS, FINDINGS, REASONS

The Motion before me seeks to delay submission due dates until after January 11, 2021 at which time a different Motion will be heard by the TLAB. I do not have before me any filed Motion, or Motion materials, pertaining to the matter to be heard on January 11th; all that has been established via correspondence from TLAB staff is a **date, time and location** for the Motion to be heard. I find it inappropriate to introduce the substance of this future Motion, for the first time, in the materials filed on **this** Motion to delay submission dates.

Both Parties who responded to the *Notice of Motion* consented to the delay of submission dates for filings on this matter. There were no other responses to the *Notice of Motion* filed with the TLAB.

The Moving Party asserts that there would be adequate time before the start of the scheduled Hearing (March 25, 2021) for the various requirements of Disclosure and Witness Statement Preparation to be met. This is not the case if the timelines set out in the TLAB's Rules are to be met, however. Allowing at least two weeks for a Decision to be issued on the Motion scheduled for January 11th, the TLAB's Rule 16.3 and Rule 16.4 allow sixty (60) days for the Disclosure of Documents and the filing of Expert Witness Statements. Additional timelines are set down thereafter for Response and Reply. To forfend the cost of all Parties and Participants preparing for the Hearing prior to receiving a Decision on the anticipated Motion to Dismiss, (as is the intent of this Motion before me), the timelines laid out in the TLAB's Rules 16.2 to 16.10 extend well into April 2021.

I find that a delay to the submission dates requested is a cost-effective approach for all Parties and Participants in light of the upcoming Motion on January 11, 2021 and order that the requested relief be granted.

DECISION AND ORDER

The requested relief in the Notice of Motion dated December 4, 2020 is granted.

Consent will be sought on adjusted submission due dates.

At a date subsequent to the Hearing of a Motion set for January 11, 2021, TLAB staff are directed to re-issue the *Notice of Hearing* for this case (20 127187 S45 03 TLAB, and 20 127188 S45 03 TLAB) with revised due dates for filing Document Disclosure, Exchange of Witness Statements, Exchange of Expert Witness Statements, Participant Statements, Responses to Witness Statements and Replies to Witness Statements set out in the Notice of Hearing on this matter.

X 

Ana Bassios
Panel Chair, Toronto Local Appeal Body