

## DECISION AND ORDER

**Decision Issue Date** Friday, January 22, 2021

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

Appellant(s): GINA PODOLSKY

Applicant: MARIN ZABZUNI

Property Address/Description: 215 AVA RD

Committee of Adjustment Case File: 20 146762 STE 12 MV

**TLAB85 Case File Number:** 20 221858 S45 12 TLAB

**Notice of Motion dates:** Tuesday January 5, 2021, Wednesday, January 13, 2021

**Last Submission date:** February 1, 2021

**DECISION DELIVERED BY TED YAO**

### APPEARANCES

Name	Role	Representative
Marin Zabzuni	Applicant	
Gina Podolsky	Owner/Appellant	Dennis Wood

### INTRODUCTION

This is a written motion by Ms. Podolsky to advance her hearing date from May to February 2021. She says this will save the TLAB time because no one has elected to be a participant and the anticipated one-sided hearing can be expected to be less than the time allotted.

I am denying her request. The TLAB accepts that applicants can change their plans after the Committee has turned down their request. This happened here. But in doing so her team did not correctly predict the Plan Examiner's response to her change

and when the error was corrected, a deadline had past and by the TLAB rules, Ms. Podolsky was no longer required to inform neighbours of its error.

The chronology is as follows:

- May 20, 2020 Ms. Podolsky applies to the Committee of Adjustment. She intends to tear down the existing house and build a new three storey residence. The plans (May 2020) show a third floor of approximately 37 by 25 feet, with a bedroom, office, bath and rec area/gym.
- May 15, 2020 Stav Zaltzman, City Plan Examiner, indicates Ms. Podolsky needs 13 variances including an FSI (Floor Space Index) of 1.165 (0.8 permitted).
- Sept 2020 Ms. Podolsky files revised plans that reduce the number of variances to five. The third floor layout appears unchanged.
- Nov 18, 2020 The Committee of Adjustment refuses the variances.
- Nov 23, 2020 Ms. Podolsky appeals. The Committee of Adjustment file is sent to TLAB.
- Nov 30, 2020 The TLAB serves a Notice of Hearing for May 10, 2021. The key deadlines are:
- Dec 21, 2020 for Ms. Podolsky to disclose any changes in her plans; and
  - Dec 30, 2020 for any neighbour to advise the TLAB that they intend to participate. None do.
- Dec 21, 2020 Ms. Podolsky files an “Applicant Disclosure”, that is, a change in plans after the Committee has ruled. She will narrow the building by 6 inches and delete the third floor bedroom and office<sup>1</sup>. The

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<sup>1</sup> The building width has been reduced by 6" (0.15 m), improving the east side yard setback. This change has also contributed to an overall reduction in floor area.

- The third storey liveable space has been modified in order to reduce square footage and minimize the impact of the third storey.

- The third storey has been reconfigured, remove the front dormer and windows on the third storey facade in order to reduce massing and impact of the facade.

Per the Architect's calculations, this affects the variances identified in the Notice of Hearing as follows: . . . From: The proposed floor space index is 1.165 times the area of the lot: 357.25 square metres. To: The proposed floor space index is **1.05 times the area of the lot**: 323.63 square metres. . . .(Applicant's Disclosure, Dec 21, 2020)

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architect anticipates the FSI will be reduced to 1.05 instead of 1.165 based on “revised drawings [that] will be submitted to Toronto Buildings for a new zoning review to confirm the changes noted.

- Dec 30, 2020 The deadline to elect to become a party or participant. After this date Ms. Podolsky is not required to notify anyone of any new filings.
- Jan 5, 2021, Ms. Podolsky brings a motion to advance the May 10, 2021 hearing date<sup>2</sup> and to regularize (my word) her Applicant Disclosure. The regularization was put this way:  
  
“We request that the order indicate that the applicant's disclosure, made on December 21, 2020 (with respect to the revised plans), be deemed to be adequate disclosure in respect of the new hearing date.”
- Jan 7, 2021 Mr. Zaltzman's third plan examination. It shows that the proper FSI is 1.14, not 1.05.
- Jan 12, 2021 Ms. Podolsky files a second Applicant's Disclosure:  
  
“From: The proposed floor space index is 1.165 times the area of the lot: 357.25 square metres. To: The proposed floor space index is **1.14 times** the area of the lot: **351.05** square metres.” (my bold)
- Jan 13, 2021 Ms. Podolsky files a second motion and affidavit. She repeats her desire for an early hearing date and suggests a date in February 2021. Her Motion says:

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<sup>2</sup> The current Notice of Hearing identifies May 10, 2020 as a full day (7 hours) hearing.

1. On the basis of the grounds identified in Part 4, we request a new earlier hearing date be established as soon as reasonably possible (and a new notice of hearing be issued) on the basis of a hearing of approximately two hours.

2. We request that the rules in regard to disclosure be amended: (1) to require that the appellant file its Expert Witness Statement, no later than 10 days before the hearing date established in the new notice of hearing and (2) dispense with any other requirement for disclosure other than that noted in paragraph 4 following.

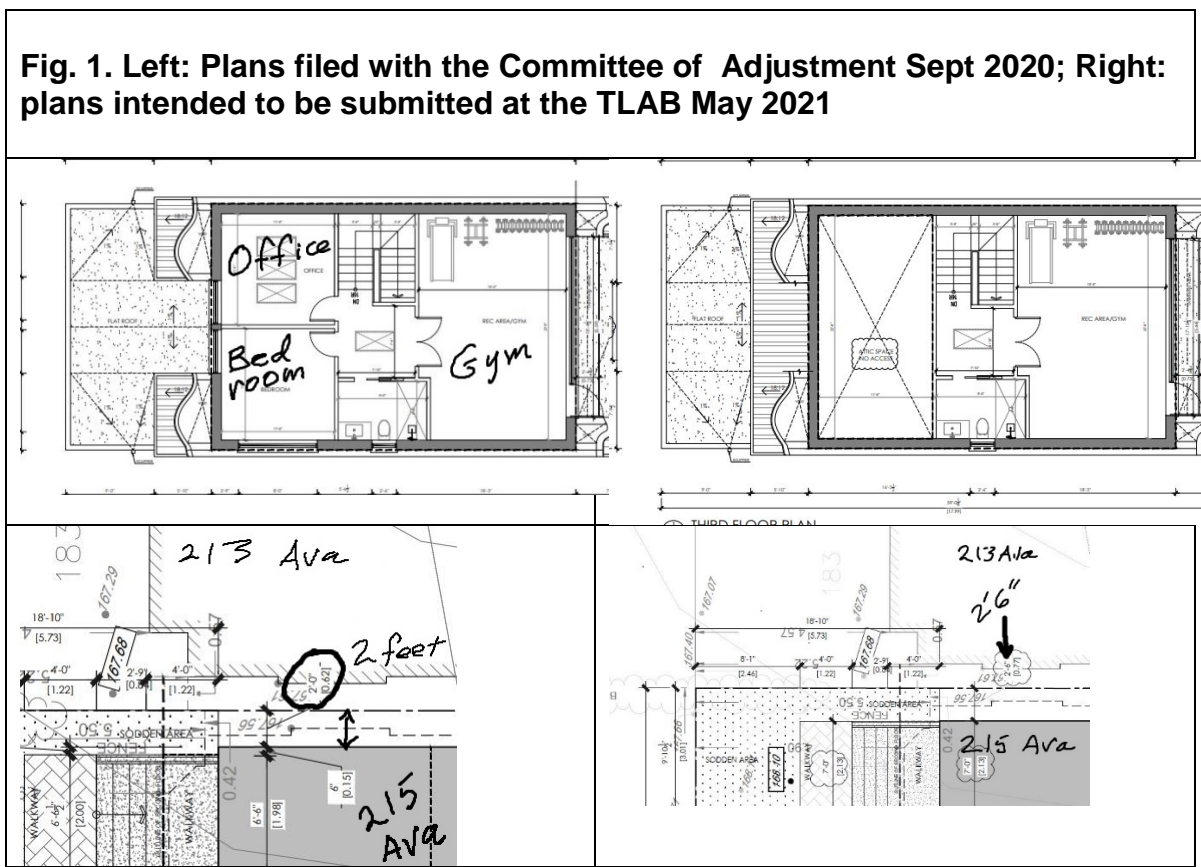
3. We request that the order indicate that the applicant's disclosure, made on December 21, 2020 (with respect to the revised plans, be deemed to be adequate disclosure in respect of the new hearing date.

“3. Consistent with [Ms. Podolsky’s] availability for any of the above noted dates, we request that the rules in regard to disclosure be amended:

(1) to not require further Applicant’s Disclosure in view of [Ms. Podolsky’s] Disclosure document filed on January 12<sup>th</sup> and

(2) require that the appellant file its Expert Witness Statement and any Disclosure documents no later than 10 days before the hearing date established in the new notice of hearing and dispense with any other requirement for disclosure.”

**ANALYSIS, FINDINGS, REASONS**



A diagrammatic illustration of the changes is shown above. As far as I am aware, the right hand diagrams have not been seen by any of the neighbours.

There are two issues raised in the motions:

- should the hearing date be advanced to February 2021?
- Should Ms. Podolsky be required to recirculate the Second Disclosure with the correct FSI?

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I will deal with the recirculation issue first. Ms. Podolsky could reasonably conclude that since all changes to the plans were in the downward direction, anyone who wanted to oppose would have already done so. But I don't know whether anyone's decision was partly induced by the FSI 1.05 number. The disclosure provided before the deadline to file for party/participant election was deficient. I also note that the earlier Disclosure did indicate that the matter was ongoing and the Plan Examiner had not yet ruled. But the Notice of Motion could have more clearly stated: "This is our best estimate, the Plan Examiner may disagree."

Or, it may be that Ms. Podolsky proactively went to her neighbours and made the changes in consultation with them. If that is the case, then it would have been easy to mention this in the affidavits (or affidavit?). Consultation and compromise are to be encouraged and rewarded.

But neither of these happened. Ms. Podolsky has strictly obeyed the Rules, but she now asks the TLAB to deem adequate the process she has followed, which I am unwilling to do.

The saving grace for Ms. Podolsky is that the process I am ordering will ensure that at the hearing on May 10, 2021, no one can fault the process and the result will be decided on its merits alone. Accordingly, I am "recirculating" the second Disclosure by asking that this Decision be sent to everyone on the original mailing list.

Since it is now uncertain whether there will be any opposition, there is no reason for advancing the hearing date. Ms. Podolsky has not brought forward any fact that suggests that this case is different from any of the many other TLAB matters set down for a hearing. All litigants wish to have an early hearing date; Ms. Podolsky is not unique in that regard.

Accordingly, I am rescinding the Notice of Hearing but keeping in place the May 10, 2021 hearing date and Webex login information previously issued.

**New deadlines:**

Applicant Disclosure as per Rule 11 (Form 3) DUE no later than January 29, 2021

Notice of Intention to be a Party as per Rule 12 (Form 4) DUE no later than February 15, 2021 or - Notice of Intention to be a Participant as per Rule 13 (Form 4) DUE no later than February 15, 2021.

Document Disclosure as per Rule 16 DUE no later than March 15, 2021

Witness Statement as per Rule 16.4 (Form 12) DUE no later than March 15, 2021

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Response to Witness Statement as per Rule 16.5 (Form 19) DUE no later than March 30, 2021

Reply to Response to Witness Statement as per Rule 16.5 (Form 20) DUE no later than April 7, 2021.

Participant Statement as per Rule 16.5 (Form 13) DUE no later than March 15, 2021

Expert Witness Statement as per Rule 16.6 (Form 14) DUE no later than March 15, 2021

Response to Expert Witness Statement as per Rule 16.9 (Form 21) DUE no later than March 30, 2021

Reply to Response to Expert Witness Statement as per Rule 16.10 (Form 22) DUE no later than April 7, 2021.

Notice of Motion as per Rule 17 (Form 7) DUE no later than April 26, 2021.

**DECISION AND ORDER**

I have set new deadlines as set out above. I order that this Decision be sent to everyone on the original mailing list. If any of this is unclear, would Mr. Wood please write to [tlab@toronto.ca](mailto:tlab@toronto.ca).

**X**



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T. Yao  
Panel Chair, Toronto Local Appeal Body