

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, March 31, 2021

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): NICHOLAS MEHTA

Applicant(s): META FORM ARCHITECTS INC

Property Address/Description: 217 GLENCAIRN AVE

Committee of Adjustment File

Number(s): 20 200631 NNY 08 MV (A0513/20NY)

**TLAB Case File Number(s): 20 230639 S45 08 TLAB**

**Hearing date:      Monday February 22, 2021**

**DECISION DELIVERED BY J. TASSIOPOULOS**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
META FORM ARCHITECTS INC	APPLICANT	
NICHOLAS MEHTA	APPELLANT	RYLEY MEHTA
SO-JEONG CHAE	PARTY/OWNER	RUSSELL CHEESEMAN

## INTRODUCTION

This is a decision on a Motion filed on February 5, 2021 by Nicholas Mehta. Nicholas Mehta is an Appellant to the appeal to the Toronto Local Appeal Body (TLAB) of the Committee of Adjustment (COA) decision for 217 Glencairn Avenue, dated December 4, 2020. The COA approved eight variances for the construction of a new residential dwelling. Mr. Mehta's Motion requests an adjournment of the scheduled Hearing date of Thursday May 6, 2021 due to the unavailability of his Representative, Ryley Mehta, on that day.

## **BACKGROUND**

The Appellant's Representative, Ryley Mehta, who has also filed a Form 4 on January 31, 2021 of his intention to be a Party in this matter, will not be available on the scheduled Hearing date due to his attendance for Jury Duty between May 3 and May 7, 2021. The Owner's Counsel, Mr. Russell Cheeseman, filed a Notice of Response to Motion on February 16, 2021.

The Motion and the Notice of Response to Motion were considered in written form on the date provided, February 22, 2021. This is authorized by TLAB's Rule 23 Adjudgments of the TLAB Rules of Practice and Procedure (December 2, 2020). It is also the default format of Motion Hearings outlined in the Tribunal's Practice Direction 2 which directs that unless otherwise ordered by the TLAB, a Motion for the adjournment of a Hearing date will be conducted as a written Motion.

## **MATTERS IN ISSUE**

Does the adjournment of the Hearing prejudice the interests of the Parties in having a full and fair proceeding?

Does the adjournment affect the ability of the TLAB to conduct a proceeding in a just, timely and cost-effective manner?

## **JURISDICTION**

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules of Practice and Procedure (December 2, 2020). The TLAB, as per Rules 23.3 and 23.4, is free to alter Hearing dates if convinced of the merits of the arguments in favour of the adjournment.

## **EVIDENCE**

Evidence in the form of an affidavit sworn by Nicholas Mehta was submitted indicating that the reason for the adjournment request date was due to his representative not being available for the date of the scheduled Hearing because of jury duty attendance.

The Appellant included as part of his Motion an email attachment, dated October 2, 2020, from the 361 University Jury Office sent to Ryley Mehta asking him to block off the week of May 3, 2021 for jury service.

Furthermore, on February 19, 2021, the Appellant also submitted a Notice of Reply to Response to Motion (Form 9) in reply to Mr. Cheeseman's Notice of Response to Motion requesting that the Motion for adjournment be dismissed.

## **ANALYSIS, FINDINGS, REASONS**

I have considered the Motion and whether the reasons for the adjournment of the Hearing are sufficient, whether it prejudices the Appellant with respect to hearing procedures, the interest of Parties in having a full and fair proceeding, and the considerations as outlined in TLAB Rule 23.3.

The principal argument and reason in favour of accepting the Motion to adjourn the Hearing is that the Representative of one of the Parties will not be available on the day of the Hearing due to their jury duty attendance. The mover of the Motion confirmed this situation through an email attachment from 361 University Jury Office indicating that the week of May 3, 2021 be "blocked" off by the Representative, Ryley Mehta, for his attendance. Given this information it would be simple to conclude that Ryley Mehta would not be able to attend the Hearing on May 6, 2021.

Mr. Cheeseman, on behalf of the Owner So-Jeong Chae, filed a Notice of Response to Motion requesting that the Motion for adjournment be dismissed on the grounds that:

- the Appellant had not submitted a Form 5 indicating the appointment of Ryley Mehta as his Representative;
- Ryley Mehta is not a solicitor;
- the Appellant had not provided a reason why someone else could not act as his Representative or why he cannot represent himself;
- the Owner will suffer prejudice by not having the within appeal heard as early as possible; and,
- no prejudice has been shown by the Appellant if Ryley Mehta does not represent him at the Hearing.

Mr. Nicholas Mehta in his Notice of Reply to Response to Motion explained that Ryley Mehta was indicated as his Representative at TLAB and that they shared ownership of the neighbouring property at 221 Glencairn Avenue. Furthermore, he confirmed that the jury duty dates were established several months prior to the TLAB Hearing being set.

This panel accepts the Appellant's explanation of unavailability of its Representative and that the jury duty dates preceded the TLAB Notice of Hearing. Furthermore, the Appellant did not need to submit a Form 5 to indicate Ryley Mehta as his Representative, as this was already confirmed in the Notice of Appeal (Form 1), as per rule 14.1 of the TLAB Rules of Practice and Procedure (December 2, 2020). Rule 14 also does not indicate that a Representative must be a solicitor.

In addition to being identified as Nicholas Mehta's Representative, Ryley Mehta, indicated their intention to be a Party to this matter in their January 31, 2021 filing of

Form 4. I find that dismissing this request for an adjournment, as per the Mr. Cheeseman's Notice of Response to Motion, would in this instance, prejudice the appellant Parties with respect to a full and fair proceeding.

I have also considered the Motion with respect to conducting a just and timely proceeding and whether the adjournment of the Hearing will cause potential harm or prejudice to the Owner. I find that the adjournment will not do this and that it is a reasonable request.

Having also reviewed the Hearing file and the disclosure documents, I would recommend that both Parties consider TLAB-led Mediation for this matter in place of a new Hearing date. Furthermore, I note that although the Owner and his counsel have provided disclosure documents, the Appellant has not done so at the time their Motion was made. Should both Parties not agree to Mediation, I would encourage that the Appellant submit disclosure documents and serve those documents on all Parties pursuant to TLAB Rule 16 Disclosure.

Given that the deadline for disclosure of documents has passed as of the writing of this Decision, I will extend the deadline due date for the filing of documents for disclosure as permitted by TLAB Rules 4.4, 4.5 and 4.6.

## **DECISION AND ORDER**

The Motion is allowed and the matter is adjourned. TLAB staff shall canvas the Parties and Participants for an alternative Hearing date and the Parties shall indicate their availability for those dates. Every attempt shall be made by staff to establish a rescheduled Hearing date later in May 2021.

In the interim, the Parties shall advise the TLAB as to whether TLAB-led Mediation is of interest on or before April 15, 2021. If agreed to, the Mediation shall be conducted by the presiding Member on the consent of the Parties and a Mediation date will be established by the TLAB.

The previous hearing date of May 6, 2021 is cancelled, and no attendance is necessary. Once a rescheduled Hearing date is confirmed, TLAB staff will issue a new Notice of Hearing. The deadline for Document Disclosure is no later than April 16, 2021.

No other changes will be made to the Notice of Hearing.

**X**

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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body