

DECISION AND ORDER

Decision Issue Date Thursday, December 17, 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): WILLIAM OLDMAN

Applicant: JIM PFEFFER

Property Address/Description: 428 LAKE FRONT

Committee of Adjustment Case File: 18 257345 STE 32 MV

TLAB Case File Number: 20 186993 S45 19 TLAB

Motion Hearing date: Thursday, December 17, 2020

DECISION DELIVERED BY ANA BASSIOS

APPEARANCES

Name	Role	Representative
Jim Pfeffer	Applicant	
William Oldman	Owner/Appellant	John Alati
Willian Guest and Eleanor Guest	Party	Dennis Wood
Mandi Kimsa	Party	Dennis Wood
Kevin Kimsa	Party	Dennis Wood
Brent Crawford	Party	
John Larsson	Participant	
Paul McIntyre	Participant	
Cindy Macmillan	Participant	

Decision of Toronto Local Appeal Body Panel Member: A. BASSIOS
TLAB Case File Number: 20 186993 S45 19 TLAB

Name	Role	Representative
Gillian Stewart	Participant	
David Bruce	Participant	
Birthe Joergensen	Participant	
Don Norris	Participant	
Rob Neish	Participant	
Erin Mitchell	Participant	
Michael Macmillan	Participant	
Ilana Kotin	Participant	
Chris Gaffney	Participant	
Nelson Coombs	Participant	
Caron To	Participant	
David Bryson	Participant	
Joe Bogdan	Participant	
Tom Mason	Participant	
Jeffrey Levitt	Participant	
Eva Kralits	Participant	
Holly Allen	Participant	

INTRODUCTION

This matter arises by way of an appeal from the Toronto and East York Panel of the Committee of Adjustment's (COA) refusal of variances to construct a four-storey single detached house at 428 Lake Front (subject property).

The subject property is located in The Beaches area of Toronto, in a residential neighbourhood bounded by Balsam Ave, Queen Street East, Silver Birch Avenue and the shoreline of Lake Ontario.

BACKGROUND

On November 27, 2020, the Appellant's legal representative (Mr. Alati) asked if a Pre-hearing Conference (PHC) could be accommodated for the purposes of identifying additional Hearing dates beyond the single day (February 18, 2021) that had been set aside in the *Notice of Hearing*. Mr. Alati canvassed the other Parties to this matter conveying the purpose of the request and seeking concurrence on the date that had been offered by the TLAB for scheduling the PHC.

On Dec 2, 2020, the TLAB was advised that legal counsel (Mr. Wood) for three opposing Parties was not available on the date that had been proposed for the PHC. In the course of the discussion between Mr. Alati, Mr. Wood and Mr. Crawford, (the other Party to this Appeal), there emerged an agreement that the TLAB be requested to set aside three days for the hearing of this matter, and that the TLAB be requested to set this matter down for the next available consecutive three day opening in the TLAB Hearing schedule, even if it meant the Hearing would be delayed by some months. On the basis of this agreement between the Parties, the TLAB was requested to reschedule the Hearing to the next available three-day hearing slot in its calendar and respond to the Parties' request without the need to bring a Motion or attend a PHC.

Seeking to facilitate a consent adjournment under TLAB's *Rule 17.2* which requires that an adjourn-to date be obtained, TLAB staff canvassed for the Parties' availability for May 2021. The email from staff noted that the original due dates outlined on the original Notice will stand and advised that if a delay of any due date was required, Parties were to ensure a Notice of Motion be filed.

TLAB staff received a response from Mr. Wood on December 7, 2020 advising that he had spoken with Mr. Alati and that he and Mr. Crawford were in agreement that it would be prudent to reschedule the disclosure dates and replace them with new dates in the context of the expected new Hearing dates to be scheduled by the TLAB. The TLAB was asked again to deal with the Parties' request without the need to bring a Motion. Parties were advised by TLAB staff that a Motion would be necessary, and Mr. Wood was provided an expedited *Notice of Motion* date for a written Motion.

MATTERS IN ISSUE

All Parties are in agreement in their request that the TLAB adjourn the previously ordered Hearing date of February 18, 2021 and that three consecutive days be set aside in May 2021 for this matter, which constitutes an addition of two Hearing days to the one already set aside to hear this matter. The Parties are in agreement that the TLAB be requested to order a delay of due dates for Document Disclosure, Witness Statements and all following due dates. The dates for filing of Notice of Intention to be a Party or Participant have passed.

JURISDICTION

The TLAB's *Rule 17.2* directs as follows: "Where a Party has obtained from the TLAB an adjourn-to date and all Parties consent to an adjournment request and all participants have been notified of the request, no motion is necessary and the TLAB may issue a revised Notice of Hearing."

The TLAB's *Rule 10.1* stipulates that the TLAB shall give *Notice of Hearing*, which for this matter was issued on October 16, 2020. The TLAB's *Rules 16.2 to 16.10* set out timelines for the serving of documents following the date on which the *Notice of Hearing* is issued.

EVIDENCE

The Parties are in agreement that three days are necessary to hear this matter. The justification that has been provided for the additional days rests on the number of Parties and the more than twenty Participants that have elected Participant status pursuant to the TLAB Rules. Consecutive days have been requested so that the Hearing may proceed without the stop/start challenges to continuity when a Hearing day is followed by a period of weeks before the next Hearing day commences.

In light of the anticipated rescheduling of the Hearing for this matter into May 2021, the filer of the Motion asserts that it would be prudent to adjourn the previously established Disclosure dates in order to allow them to be aligned not with the original February 18, 2020 date, but with the anticipated new dates. It is suggested by the filer of the motion that this approach would be fair, efficient, and cost effective for the Parties "insofar as they would not have to bear the costs of preparing witness statements and other documentary information at one time and then of further preparation again four months later when the information in the minds of those involved in the hearing has become stale."

ANALYSIS, FINDINGS, REASONS

First, a note on the importance of the formal process for amending ordered dates for Hearings and Disclosures (or the subject of any other formal notification on the part of the TLAB).

The TLAB's notification protocols and the timelines outlined in its Rules are in place to afford all interested persons fair warning when some aspect of the Appeal process is proposed to be changed. While TLAB staff are flexible and accommodating, the formal pre-hearing and Notice of Motion processes are established to give fair, public, and advance notice to **all** interested persons that the timelines or expectations might be amended.

The original impetus for this Motion was the request for two additional Hearing days in addition to the one already set down by the TLAB for hearing this matter. The Parties have only identified the number of Parties and the large number of Participants who

have elected status as the basis for requesting additional days of Hearing time. TLAB scheduling practice is to allow one Hearing day for appeals of variances to Zoning By-laws. Following the COVID 19 pandemic shutdown of the TLAB and the resulting backlog of matters to be dealt with, the scheduling challenges of the TLAB have been exacerbated and there is an ongoing necessity to apply some judicious consideration to requests for extension of hearing times.

Expert Witness Statements in this matter have yet to be filed and I have therefore no means to estimate the time to apportion to an unknown number of witnesses, nor do I have a sense of the complexity of the issues that will be before the TLAB at the Hearing. It is with some reluctance that I directed the TLAB staff to seek three dates for this matter as I am of the opinion that some cooperation between legal counsel and co-ordination between Participants can go a long way to focusing and expediting a Hearing.

I am also mindful of the burden and cost to the TLAB and to all persons participating in the hearing process, and of the extended time taken away from other responsibilities for residents who wish to be heard. In the balance between ensuring that all Parties and Participants have an opportunity to be heard and the expeditious and cost-effective determination of proceedings, at this time I find that I must weigh the need to allow each person a fair opportunity to be heard as the greater consideration. Consequently, advise the Parties that when the hearing of this matter commences, a plan for how the Hearing will proceed and the time to be allotted to each speaker will be instituted. I encourage the Parties to co-ordinate and limit testimony on areas of evidence that are identified as being not in contention. I also encourage the Participants in this matter to coordinate their testimony and use best efforts to limit repetition and to perhaps consider identifying spokespersons from within the group of Participants.

I find that the alignment of Document Disclosure dates and all following, requisite due dates within a revised *Notice of Hearing* is an appropriate accommodation to the changed Hearing dates and will facilitate the preparation of testimony before the TLAB.

DECISION AND ORDER

The TLAB staff are directed to:

1. Canvas the Parties and Participants to establish three (3) Hearing dates in May 2021.
2. Issue a new *Notice of Hearing, for a virtual Hearing event*, to hear this matter on three days in May 2021 and that best efforts be employed to find days that are consecutive or reasonably close together.
3. Populate the Revised *Notice of Hearing* for this matter with revised Document Disclosure dates and all following and requisite due dates.



Ana Bassios.

Ana Bassios
Panel Chair, Toronto Local Appeal Body