

INTERIM DECISION AND ORDER

Decision Issue Date Monday, May 31, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): REZA SEDIGHFAR

Applicant(s): CULTIVATE GROUP

Property Address/Description: 75 THIRTY EIGHTH ST

Committee of Adjustment File

Number(s): 19 259142 WET 03 CO (B0073/19EYK), 19 259147 WET 03 MV(A0647/19EYK), 19 259148 WET 03 MV (A0648/19EYK)

TLAB Case File Number(s): 20 194385 S53 03 TLAB, 20 194386 S45 03 TLAB, 20 194388 S45 03 TLAB

Hearing date: May 12, 2021

Deadline Date for Closing Submissions/Undertakings: Not applicable

DECISION DELIVERED BY S. GOPIKRISHNA

REGISTERED PARTIES AND PARTICIPANTS

Applicant	CULTIVATE GROUP
Appellant	REZA SEDIGHFAR
Appellant's Legal Rep.	IAN FLETT
Party	City of Toronto
Party's Legal Rep.	DERIN ABIMBOLA
Party	GAUTAM MUKHERJEE
Party	LONG BRANCH NEIGHBOURHOOD

Participant	ALEXANDER DONALD
Participant	ESTER GOMEZ
Participant	RANDY MCWATTERS
Participant	RONALD JAMIESON
Participant	CHRISTINE MERCADO
Participant	JOHN MACDONALD
Expert Witness	DAVID GODLEY
Expert Witness	MICHAEL MANETT
Expert Witness	CLARISSA JEWELL

INTRODUCTION AND BACKGROUND

The background of this case is explained in my Motion Decision dated April 30, 2021, and is consequently not repeated here

The Proceeding respecting 75, Thirty Eighth Street was scheduled to begin on May 12, 2021. Early on the morning of May 12, 2021, I was made aware by the Staff of the TLAB that they had obtained a request for an adjournment from Mr. Ian Flett, the lawyer for the Applicant/Appellant, because of possible modifications to the Application.

At the Hearing held on May 12, 2021, the Applicant/Appellant was represented by Mr. Ian Flett, while the City of Toronto was represented by Ms. Aderinsola Abimbola- both Mr. Flett and Ms. Abimbola are lawyers. Mr. Gautam Mukherjee represented himself, while the Long Branch Neighbourhood Association (LBNA) was represented by Ms. Judy Gibson. A few of the Participants, including Ms. Christine Mercado, and Mr. Ron Jamieson were also in attendance.

After the Parties and Participants introduced themselves, I stated that I was aware that Mr. Mike Holland, a community member who lived in the vicinity of the Site, wanted to elect to be a Participant, notwithstanding his not completing the requisite paperwork by the deadline for election. Notwithstanding Mr. Flett's lack of an objection to Mr. Holland's intention to elect as a Participant, I ruled that no relief would be provided from the Rules to allow anybody to elect as a Party, or a Participant, because the Rules were clear about the process to be followed by

community members looking to elect as Parties or Participants. Some of the community members said that the Rules were not clear about how to elect for Party or Participant status.

I then asked if Mr. Mukherjee could identify himself because I had a “very specific question” for him. I was informed that Mr. Mukherjee was “having technical issues joining the Hearing” and would “join us shortly”. I informed the Parties and Participants that there was a specific reason why I wanted to know who Mr. Gautam Mukherjee is, and its nexus with the matter before me.

I explained to the attendees that I work as the Executive Director of a non-profit organization, that focuses on housing and homelessness, and that I had a business meeting with a certain Mr. Gautam Mukherjee (who also worked in the non-profit sector for a different organization in a professional capacity) six or seven years ago. I said that I had assumed that the Mr. Mukherjee involved in this Appeal was the same gentleman whom I had met earlier, and had sought the opinion of the Integrity Commissioner of the City of Toronto, Mr. Jonathan Batty, to find out if there was a conflict of interest, real or apparent, if I heard this case. I then stated that I had been advised by the Integrity Commissioner’s office, that on the basis of the submitted facts, their advice was that there was no conflict of interest- on the basis of this advice, I concluded that I would hear the case.

Mr. Flett replied that as Counsel for the Applicant/Appellant, he had no concerns about a “reasonable apprehension of bias” about my hearing the matter, especially since the matter was “proceeding towards a Settlement”.

Mr. Flett stated that he was requesting for an adjournment, with the next Hearing to be held in August 2021, because his client, Mr. Sedighfar, wanted to substantially modify the application by withdrawing the request for the severance, as well as reducing the FSI. When I canvassed the other Parties for their perspective about adjourning to a date in August 2021, to facilitate Settlement discussions, everybody was in agreement. Many of the Parties and Participants in opposition expressed concerns about what they saw as the lack of transparency on the part of the Applicant e.g. “*Throwing an FSI number without consulting us*”, while others asked if the Settlement discussions were being carried out in good faith e.g. “*We were told that we would be consulted about our perspectives on the design of the house after the COA hearing, and nothing happened till we found out about the Appeal to the TLAB.*” Mr. Flett allayed the concerns by stating that his client would reach out to the Opposition, and share the proposed design with them, well in advance of the next Hearing.

I asked Mr. Flett if further notice would have to be given under Section 45.18.1.1 of the Planning Act, given the proposed changes to the variances. Mr. Flett said that he did not have an answer about further notice, since the design had not been finalized.

I also asked Mr. Flett how much time would have to be allocated by the TLAB to complete the Proceeding if the Hearing were to proceed by way of Settlement. Mr. Flett said that it would take less than a day, and the other Parties were in agreement. I then asked Mr. Flett how long would the Proceeding take if the Parties could not arrive at a Settlement.

Mr. Flett said that the Proceeding may require five days of Hearing time if no Settlement could be reached, and requested that the matter be heard on consecutive days, if possible. When I asked the Parties if five days would be needed, notwithstanding the withdrawal of the Severance request, Ms. Abimbola said that based on her experience with other variances only-Hearings in the Long Branch community, (i.e. which did not involve a Severance request) “four or five days” may be required to complete the Hearing. She also expressed her support for the matter to be heard on consecutive days. Mr. Mukherjee, and some of the Participants said that it would be difficult for them to attend, if the matter to be heard on consecutive days, for “work related reasons”.

I advised Mr. Flett that a Motion could be brought forward by the Appellant, “well in advance of the next Hearing” with information regarding the following:

- The updated set of variances to be ruled on by the TLAB
- Whether the Hearing would proceed by way of a Settlement Hearing, or a Contested Hearing
- If new notice about the variances is necessary under Section 45.18.1.1 of the Planning Act
- Number of days required to complete the Hearing if it was to proceed by way of a Settlement, and number of days required to complete the Hearing if it was to proceed by way of a Contested Hearing

I advised the Parties and the Participants that the TLAB staff would be in touch with them to establish their availability, for the next Hearing, and then thanked all the Parties and Participants, before adjourning the Hearing.

The TLAB Staff subsequently contacted the Parties and identified August 10, 2021 as an optimal date, on which everybody was free to meet.

MATTERS IN ISSUE

The question before the TLAB is to identify how best can the Proceeding be facilitated given the proposed modifications to the Appeal, and the various issues to which answers have not been identified.

JURISDICTION

The TLAB relies on its Rules of Process and Procedure (the “Rules”) to make decisions about administrative issues.

ANALYSIS, FINDINGS, REASONS

The first issue that needs to be discussed, is the confusion alluded to by some of the Parties and Participants in the process prescribed by the TLAB, to elect as Parties, or Participants. I understand from the discussion at the Hearing that there is “some confusion” or “lack of clarity” about the process, but I was not made aware of the precise nature of the confusion at the Hearing. I would encourage the Parties to inform the TLAB of where the Rules are unclear, so that the TLAB can better disseminate information about the process for electing to be a Party, or a Participant, such that the specific confusion alluded to in this case, can be addressed.

Since the proverbial proof is in the pudding, I believe that the clarity of the TLAB’s Rules about how to elect to be a Party or a Participant is best illustrated by the fact that six (6) Participants successfully completed the requisite paperwork to elect as Participants. My Ruling on precluding community members from election as Participants or Parties at the commencement of the Hearing, also takes into account, the need for the community member(s) in question, to submit a Witness Statement by the last date for submissions, to prevent a “trial by ambush”.

While I was made aware by Mr. Flett that he did not object to community members electing to be Participants, in this matter, I am also sensitive to the precedential nature of a Ruling that would have allowed for election at the beginning of the Hearing, notwithstanding the lack of submission of paperwork by

the deadline. Given this reason, I erred on the side of caution, and refused the community member's request to be provided relief from the Rules, and elect as a Participant.

I hope that the Settlement discussions will proceed smoothly, and result in a successful Settlement being reached by all the Parties.

It is important that the Appellant inform the TLAB of the updated variances, with accompanying Plans and Elevations, such that everybody has adequate, if not ample opportunities, to inform themselves about the new variances, and what the impact would be on their residence, and the community, as the case may be. Given that the Hearing will resume on August 10, 2021, I believe that it would be reasonable to ask the Appellant to bring forward a Motion (as per my Ruling at the Hearing held on May 12, 2021) **by July 12, 2021** , with the listing of the updated variances, and whether further notice would be needed under Section 45.18.1.1 of the Planning Act. The Motion may also provide an update on whether a Settlement has been reached, and an indication about how the Proceeding may be continue to be heard (by way of a Settlement Hearing or a Contested Proceeding) when we reconvene on August 10, 2021. In case the Matter has to be heard by way of Contested Proceeding, the Appellant may also advise about how many days of Hearing would be needed to complete the Proceeding.

The Parties in opposition to the Appeal, may file their Response to the Motion by **July 19, 2021**, while the Appellant may file their Reply by **July 23, 2021**.

It may be noted that the stated timelines provide me with an opportunity to review the file, and make Decisions about the need for further notice, as well as any administrative matters that arise. It is important that administrative matters be resolved, before the commencement of the next Hearing, so that we can devote our undivided attention exclusively to the Planning matters at the actual Hearing itself.

I have requested the TLAB Staff to send out a **Notice of Hearing for August 10, 2021**, along with this Interim Decision

Should more time be required for the filing of the Motion, or other should other issues arise, the TLAB may be spoken to.

INTERIM DECISION AND ORDER

1. The Proceeding respecting 75, Thirty Eight Street, will resume at **9:30 AM on August 10, 2021**, by way of a Webex Teleconference. A Notice of Hearing accompanies this Interim Decision and Order.
2. The Appellant is asked to bring forward a Motion by the end of day on **July 12, 2021**, with the following information:
 - The updated set of variances to be ruled on by the TLAB
 - If new notice is necessary under Section 45.18.1.1 of the Planning Act
 - Whether the Hearing would proceed by way of a Settlement Hearing or a Contested Hearing
 - Number of days required to complete the Hearing if it were to proceed by way of a Settlement, and number of days required to complete the Hearing if it were to proceed by way of a Contested Hearing
3. Other Parties are given time till the end of day on **July 19, 2021** to file a Response to the Motion.
4. The Appellant is given time till **July 23, 2021** to file a Reply to the Response.

Should any issues arise with the above timeline, the TLAB may be spoken to
So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body