

INTERIM DECISION AND ORDER

Decision Issue Date Friday, June 04, 2021

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

Appellant(s): IAN GOODWIN

Applicant(s): CZC BUILDING CONSULTANTS LTD

Property Address/Description: 33 CATALINA DR

Committee of Adjustment File

Number(s): 20 178060 ESC 24 MV (A0195/20SC)

TLAB Case File Number(s): 20 213747 S45 24 TLAB

Hearing date: May 26, 2021

DECISION DELIVERED BY C. KILBY

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
CZC Building Consultants Ltd.	Applicant	Han Zhou
Jo-Ann Wong	Owner	
Cale Duguay	Primary Owner	
Ian Goodwin	Appellant	

INTRODUCTION

This is an Appeal relating to the proposed construction of a new front and rear addition and a new second storey addition by Jo-Ann Wong and Cale Duguay, owners (**Owners**) of 33 Catalina Drive (**Subject Property**). The Appellant, Ian Goodwin, resides next door to the Subject Property at 35 Catalina Drive and opposes the Owners' proposed additions. Han Zhou of CZC Building Consultants Ltd. represents the Owners.

Mr. Zhou, Ms. Wong, Mr. Duguay and Mr. Goodwin all appeared at the Virtual Hearing of this Appeal on May 26, 2021.

BACKGROUND

In a Decision mailed on October 19, 2020, the Owners obtained approval on condition from the Committee of Adjustment, Scarborough Panel (**COA**) for one variance to permit the construction of the proposed additions described above. The variance granted was as follows:

1. Chapter 10.20.40.20.(1), By-law No. 569-2013

The maximum permitted building length is 17m.

The proposed building length is 20.73m.

The COA's decision was subject to a condition that the Owners build in accordance with specified drawings appended to the COA Decision.

MATTERS IN ISSUE

The issue at the Hearing was whether or not the Hearing could proceed as scheduled.

JURISDICTION

The TLAB Rules of Practice and Procedure (**Rules**) guide the process of an Appeal before the TLAB, including disclosure deadlines, process, and the powers of the TLAB to ensure effective and transparent proceedings. The following Rules are relevant to this Decision.

2.3 The TLAB may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.

2.12 Where a Party or Participant to a Proceeding has not complied with a requirement of these Rules or a procedural order, the TLAB may:

- a) grant all necessary relief, including amending or granting relief from any procedural order on such conditions as the TLAB considers appropriate;
- b) adjourn the Proceeding until the TLAB is satisfied that there is compliance;
- c) order the payment of costs; or
- d) refuse to grant the relief in part or whole.

11.1 Whether or not an Applicant is an Appellant, an Applicant shall disclose any intended revisions or modifications to the application that was made to the Committee of Adjustment for the City of Toronto.

11.2 The Applicant shall File using Form 3 an Applicant's Disclosure, including text and plans, with the TLAB not later than 20 Days after a Notice of Hearing is Served.

16.2 Parties and Participants shall Serve on all Parties a copy of every Document they intend to rely on or produce in the Hearing, except:

- a) any Document previously Filed with the Committee of Adjustment;
- b) any Public Document listed on the TLAB's List of Public Documents; and,
- c) any Document previously Filed by a Party or Participant, and File same with the TLAB not later than 60 Days after a Notice of Hearing is Served.

16.3 Where a Party or Participant fails to disclose Documents in accordance with Rule 16.2 the TLAB may on objection disallow the Document to be entered as evidence and may make such other orders as it deems appropriate in the circumstances.

EVIDENCE

A Notice of Hearing was issued by the TLAB on December 30, 2020 for a Virtual Hearing date of May 26, 2021. The Notice of Hearing set out the deadlines for submissions by the Parties. The Applicant's Disclosure was due no later than January 19, 2021.

The Applicant did not file any materials with the TLAB regarding this Appeal until the day before the Hearing. On May 25, 2021, the Applicant sent its disclosure to the TLAB directly without sending it to Mr. Goodwin. Mr. Zhou explained that he was not aware of the applicable deadlines and believed all relevant material was already in the TLAB file as a result of the prior COA proceeding.

The material filed by the Applicant comprises drawings dated May 2021, aerial photographs of the Subject Property, and four photographs of other properties. Mr. Zhou advised that the plans had been recently revised to address Mr. Goodwin's concerns. The plans were modified by removing the second storey from the proposed rear addition; however, the rest of the proposed rear addition would be retained.

Mr. Goodwin indicated that he needed time to review the disclosure, particularly the modified drawings, and to consult with others assisting him with his Appeal before he could respond. He requested that the Hearing be postponed in order to allow for this opportunity. I asked whether or not a recess would suffice for this purpose. Mr. Goodwin indicated he needed more time, particularly since the plans had been modified.

Mr. Zhou opposed an adjournment, indicating that the Owners preferred to proceed with the Hearing as scheduled to avoid delays in their proposed project. He suggested the Hearing proceed as scheduled using the plans that were before the COA and of which Mr. Goodwin has notice. Initially Mr. Goodwin accepted this proposal.

I asked Mr. Zhou whether there was evidence regarding the conformity to the Official Plan (**OP**) and Mr. Zhou referred to an aerial photograph in the COA file. I could not locate photographic evidence from the COA file by reviewing what was available online at <http://app.toronto.ca/AIC/index.do>, the City's Applicant Information Centre.

After spending some time trying to locate the previously-filed materials on which the Owners sought to rely, Mr. Goodwin indicated a preference for adjourning the Hearing. His submission was that time is needed for the Owners to present as complete a record as possible, including with reference to additional external structures on the Subject Property. Mr. Zhou reiterated the Owners' preference not to adjourn in order to avoid further delays.

ANALYSIS, FINDINGS, REASONS

The Applicant had notice of the Hearing date and associated disclosure requirements, yet only filed its materials the day before the Hearing, without notice to Mr. Goodwin. I explained that when plans have changed, there is a requirement for the Applicant to give notice of those changes to all affected parties (see section 45(18.1.1) of the *Planning Act*).

As I explained during the Hearing, an adjournment is appropriate in this case to secure a just determination of this Appeal. Given that the Owners have modified their proposal in response to the concerns raised by Mr. Goodwin, it is only fair that Mr. Goodwin have the opportunity to review the revised plans and consider his position and possible response. Since Mr. Goodwin has relied on the assistance of others in order to prepare his Appeal, he should have the opportunity to consult with those individuals about the revised plans.

The Owners were clearly disappointed by the prospect of further delay. I sympathize with their position. Nevertheless, as I explained during the Hearing, it is not for the Party who disregards the timetable set out by the Rules to later insist on strict adherence to that timetable when doing so presents an unfairness to other Parties who have complied with the timetable. It is also incumbent on the Applicant to put forward a case and evidence as to why the variance requested meets the legislative and statutory tests, known as the four tests, in section 45 of the *Planning Act*.

I also explained that a TLAB Hearing is a hearing *de novo* and encouraged Mr. Zhou to review and consider whether all the necessary information relating to the Appeal is currently in the record. I suggested that he review the TLAB process and requirements, including previous TLAB decisions, in order to ensure that the Owners put forward as complete a record as possible for the TLAB's consideration, including in response to the issues raised by Mr. Goodwin about additional structures.

It is regrettable that the Hearing could not be rescheduled to a sooner date, however, Mr. Goodwin was not available before mid-July. In order to move the process along as quickly as possible, the earliest possible date for all Parties was selected, notwithstanding my own availability.

I suggested that the Parties consider speaking to each other in the time period between now and the revised Hearing date in case there are matters in dispute which can be narrowed or agreed upon. I explained the process of an expedited settlement hearing in the event a settlement can be reached about the terms of the Applicant's proposal.

DECISION AND ORDER

The Hearing is adjourned to July 21, 2021. A new Notice of Hearing has been issued including the following new deadlines, which were set with the input of the Parties during the Hearing:

Hearing Date: July 21, 2021

Applicant Disclosure: due by June 16, 2021

Response: due by June 30, 2021

Reply (if any): due by July 12, 2021

I am not seized of this matter. If there are any problems implementing this decision the TLAB may be spoken to on notice to the other Party.

X 

Christine Kilby
Panel Chair, Toronto Local Appeal Body