

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, June 30, 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): ANTONIO CALVANO

Applicant(s): MAHIR MANIOS

Property Address/Description: 21 VERBENA AVE

Committee of Adjustment File

Number(s): 20 148966 STE 04 MV (A0464/20TEY)

**TLAB Case File Number(s): 20 224564 S45 04 TLAB**

**Hearing date: Thursday, June 03, 2021**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY D. LOMBARDI**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	MAHIR MANIOS
Party (TLAB)	DAVID CAMPBELL
Party Legal Rep.	WILLIAM ROBERTS
Appellant/Owner	ANTONIO CALVANO
Appellant's Legal Rep.	AMBER STEWART
Expert Witness	TERRY MILLS
Expert Witness	FRANCO ROMANO
Participant	STEWART HILLGROVE

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Participant	IVAN PETROV
Participant	JUDITA PETROV
Participant	MICHAEL YOUNG
Participant	MELANIE AMOS
Participant	CRAIG HODGES
Participant	LYNDA SUCHARDA
Participant	ROBERT CHANT

## **INTRODUCTION**

This matter relates to an appeal by Antonio Calvano (Appellant/Owner) of a decision of the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing variances to permit the alteration of the existing two-storey detached dwelling at 21 Verbena Avenue (subject property) by constructing an attached garage, a new covered front porch, a rear terrace, a front, side, a rear two-storey addition, a partial third storey addition, and a side third storey balcony.

Mr. Calvano appealed the COA decision to the Toronto Local Appeal Body (TLAB) and a virtual Hearing was convened on June 3, 2021. The June 3<sup>rd</sup> Hearing was converted to a TLAB-led Mediation session on the consent of the Parties and the entire day was consumed through numerous private 'break out' sessions as well as discussions with the respective Appellant and the other Party, Mr. Campbell and his legal counsel, William Roberts.

At the conclusion of the day on June 3<sup>rd</sup>, both the Appellant's legal counsel, Ms. Stewart, and Mr. Roberts advised the presiding Member that a settlement, in principle, had been reached in the matter. The Parties agreed to exchange additional documentation to memorialize the matters agreed to and the issues resolved. Additionally, the Owner agreed to direct his architect to prepare a revised set of Site Plan drawings to reflect generally the modifications to the proposed dwelling relating to the settlement and to provide those drawings to Mr. Campbell for his review. The drawings were also to be served on all the Participants as soon as available, and to be to file with the TLAB.

Furthermore, the Owner was directed to obtain a new Zoning Review from the City with respect to the revised drawings and a list of new variances.

Given that the Mediation had consumed the entire return Hearing Day, that Hearing was adjourned, and the Parties were canvassed for a new Hearing date on which to conduct an expedited Settlement Hearing on the term of the proposed settlement. After consultation with TLAB staff and the Parties, July 8, 2021 was set as the return date and the TLAB issued a new Notice of Hearing in this regard.

## **BACKGROUND AND EVIDENCE**

On June 24, 2021, the TLAB received an email from Ms. Stewart on behalf of the Appellant/Owner, carbon copied to the other Parties and Participants, providing an update regarding the settlement in this matter. She advised that her client's designer had been delayed in completing the revised plans to implement the settlement and suggested that the plans would likely be available sometime at the end of June. This timing, she submitted, unfortunately coincided with the Canada Day holiday.

Therefore, Ms. Stewart asserted that in her opinion, given the upcoming holiday, there was not sufficient opportunity between then and the July 8<sup>th</sup> return Hearing date to have the revised plans reviewed by Mr. Roberts and his client, as well as to obtain a new Zoning Examiner's Review.

As a result, she requested that the hearing attendance scheduled for July 8<sup>th</sup> be adjourned.

Furthermore, in her June 24<sup>th</sup> email, Ms. Stewart advised that she had discussed the matter with Mr. Roberts and had suggested the option of proceeding with the Settlement Hearing in writing, via Affidavit evidence. She submitted that this approach would avoid the need for all Parties and Participants to attend a further Hearing, if agreed to by the presiding Member.

She noted that the Participants had not engaged in the Mediation session on June 3<sup>rd</sup> and that they may not be aware of the terms of the settlement agreed to by the Parties. To correct this situation, she proposed that the once all settlement materials were finalized, including the Minutes of Settlement and the revised plans and variances, those would be served on all the Participants.

Ms. Stewart also proposed to submit the Affidavit of the Owner's expert planning witness, Mr. Romano, to the Tribunal setting out his opinion evidence regarding the revised variances. She submitted that if the presiding Member had any outstanding questions or concerns, that a virtual settlement Hearing could then be convened to provide oral evidence, as necessary.

She noted that this had been discussed with Mr. Campbell and his solicitor and that they had consented to the above cited approach. Ms. Stewart also affirmed that all the Participants in the matter had been served notice of this request by copy of her June 24<sup>th</sup> email.

## **MATTERS IN ISSUE**

There are no matters in issue as all persons on the TLAB's List of Appellants, Parties, Participants and Legal Representatives for this appeal were served with Ms. Stewart's email and the only other Party in this matter, Mr. Campbell, and his counsel had agreed to the adjournment. Additionally, this matter involves a settlement, in principle, arrived at between the Appellant and Mr. Campbell and the adjournment is

intended to accommodate time for the revised plans to be circulated and reviewed and to obtain a new Zoning Review.

The only question that stems from this request for an adjournment is whether the TLAB should proceed with this proceeding by way of a written Settlement Hearing as opposed to a virtual 'oral' Hearing event.

## **JURISDICTION**

Under the TLAB's Rules of Practice and Procedure (Rules), and particularly Rules 2.2, 17.2, and 23.2, a Hearing can be adjourned to a rescheduled date.

More specifically, Rule 2.2 permits the Tribunal to liberally interpret the Rules to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. Rule 23.2 allows the presiding Member to adjourn a scheduled Hearing on the consent of the Parties and with service to all without the need for a formal Motion to seek an adjournment, in accordance with Rule 17.2.

## **EVIDENCE**

Ms. Stewart's email to the TLAB of June 24, 2021, is carbon copied to all Parties and Participants in this matter. Her email also confirms direct discussions with Mr. Roberts, counsel to Mr. Campbell, the only Party in this appeal and he has consented to the request to adjourn the July 8<sup>th</sup> Hearing.

## **ANALYSIS, FINDINGS, REASONS**

There are numerous considerations the TLAB must factor into deciding whether or not to grant an adjournment of an already scheduled Hearing event. Those factors include, among others, the reasons for an adjournment, the interests/position of the Parties, how an adjournment might impact Participants and other Persons, the integrity of the TLAB process, and the timeliness of the adjournment.

In this instance, the original return date for this appeal was June 3, 2021. On that day, the presiding Member canvassed the Parties for their interest in engaging in TLAB-led Mediation which the Parties consented to, and the day proceeded as such. At the conclusion of the Mediation session, the Parties advised that a settlement, in principle, had been reached and a new Hearing date for an expedited Settlement Hearing was agreed to. That Hearing date was set by the Tribunal for July 8, 2021.

In the interim, the Parties were tasked with revising the drawings to reflect the terms of settlement and obtain a new Zoning Review, in addition to memorializing the terms in a formal agreement. Ms. Stewart has now advised to Tribunal that for various reasons some additional time is required by the Owner to complete the requirements associated with the Settlement process.

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Given the relative advanced stages of the Settlement between the Parties and the circumstances outlined by Ms. Stewart in her email, I am prepared to adjourn the matter to a future date agreeable to all Parties. However, I am not prepared to allow this matter to proceed as a written Hearing as those who have elected Participant status were not included in the Mediation session that occurred on June 3<sup>rd</sup> and may not be fully aware of the precise terms of the settlement between the Parties. Furthermore, those Participants have filed Witness Statements and should have an opportunity to present 'viva-voce' evidence at a virtual Hearing where attendance is required.

As a result, I am directing that the Hearing scheduled for July 8, 2021, be adjourned and the Parties and Participants be canvassed for a rescheduled date for an expedited Settlement Hearing. In doing so, I am confident that the interest of the Parties in having a full and fair proceeding will be upheld and the integrity of the TLAB's process maintained.

Therefore, I am satisfied that the request for an adjournment is justified, and I find that the rescheduling of this matter to a future date will not cause or contribute to any existing or potential harm or prejudice to others.

Finally, I find that adjourning this matter and scheduling a new hearing date for an expedited Settlement Hearing will not impact the Tribunal's ability to conduct this proceeding in a just, timely and cost-effective manner as required by the TLAB's Rules.

## **DECISION AND ORDER**

The TLAB adjourns the Hearing for July 8, 2021. The July 8<sup>th</sup> Hearing is cancelled, and no attendance is required.

TLAB staff will canvas the Parties and Participants for a new date to conduct an expedited Settlement Hearing based on the terms of Settlement agreed to by the Parties, but the TLAB may not be bound to consensus on a new date.

TLAB staff will issue a new Notice of Settlement Hearing, but the filing/submission due dates contained in the previous Notice will remain the same.

If difficulties arise in implementing this Decision and Order the TLAB may be spoken to.

2021-06-30

**X** 

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Signed by: dlombar