

# DECISION AND ORDER

**Decision Issue Date**      Friday, July 16, 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): ALIDA MILETIC

Applicant(s): LUIS CALLE

Property Address/Description: 45 HOLMESDALE CRES

Committee of Adjustment File

Number(s): 19 197227 STE 09 MV

**TLAB Case File Number(s): 19 264416 S45 09 TLAB**

**Motion Hearing date: July 13, 2021**

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

**DECISION DELIVERED BY DINO LOMBARDI**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Luis Calle	Applicant/Party	
Analie Bumagat	Owner	
Jayson Condoy	Primary Owner	
Alida Miletic	Appellant	Amber Stewart
Loretta Piatelli	Party	

## INTRODUCTION AND BACKGROUND

This is a decision on a Motion brought by Mr. Luis Calle, the Applicant in this matter, on behalf of the co-owner of 45 Holmesdale Crescent (subject property) requesting relief from a decision of the Toronto Local Appeal Body (TLAB) of an appeal regarding the subject property.

In its decision (Decision) of February 26, 2021, the TLAB approved, with conditions, an application for a single variance to legalize and alter the existing rear 2<sup>nd</sup>-storey deck as follows:

*“2. The existing deck shall be modified (including removal of the easterly post, platforms and joists, and wood beams as shown on the plans) and construction of the altered deck completed on or before June 30, 2021, failing which the variance shall not be authorized.”*

The plans referred to in Condition 2, above cited, are the Plans prepared by Ecuabuilder Custom Homes and Complete Renovations, dated February 26, 2021, and were attached as **Attachment 2** to the February 26<sup>th</sup> Decisions.

Mr. Calle recently brought forward a Motion requesting an amendment of that Decision for an extension to the deadline date of **June 30, 2021** in Condition 2, above, for the reasons set out below.

The TLAB held a ‘virtual’ Motion Hearing by way of the City of Toronto’s (City) WebEx meeting platform on July 13, 2021, to hear the Motion. In attendance remotely were the Applicant, Mr. Calle, and Jason Condoy, the co-owner of the subject property. Also in attendance were Ms. Alida Miletic (Appellant), and her legal counsel Amber Stewart, as well as Loretta Piatelli who, along with the Appellant, is a co-owner of the abutting property at 43 Holmesdale Cres., and who elected Party status in the initial appeal Hearing.

In support of his Motion request, Mr. Calle submitted the requisite Notice of Motion (Form 7) and an Affidavit (Form 10) stating the requested relief and the grounds for that request.

With respect to the above-reference filing, I questioned Mr. Calle as to whether he had reviewed the TLAB’s Rules of Practice and Procedure (Rules) and had become familiar with the requirements associated with the Motion process. He acknowledged that he had.

I, then, questioned him as to why he had failed to adhere to the Tribunal’s Rules of service, specifically Rules 17.8 and 17.9, which require the Moving Party to serve the Notice of Motion on all Parties and Parties. Mr. Calle apologized and advised that he was not aware of that obligation. This answer was troubling, and I admonished him for not doing so, noting that ignorance of the TLAB’s Rules is not an excuse for the lack of service and notification to the other Parties.

## **MATTERS IN ISSUE**

Is an extension of the deadline date in Condition 2 requiring that the existing 2<sup>nd</sup>-storey deck be modified, and construction of the altered deck be completed by no later than June 30, 2021, by three (3) to four (4) weeks warranted given the reason(s) provided by the Applicant in his Motion materials?

## **JURISDICTION**

The TLAB has authority to alter or amend a Decision and Order, both under the general power to grant relief from its Rules of Practice and Procedure (Rule 2.11), and also under Rule 30.1, Correcting Minor Errors.

## **EVIDENCE**

Mr. Calle explained that he filed the subject Motion on behalf of Mr. Condoy requesting that the deadline date of June 30, 2021, identified in Condition 2 of the TLAB's Decision and Order dated February 26, 2021, for the modification and construction of the existing 2<sup>nd</sup>-storey deck at the rear of the subject property be amended to reflect an extension of approximately a month.

He explained that the Motion request was due to issues with obtaining the necessary materials (lumber) primarily because of the ongoing COVID-19 pandemic. He noted that a building permit for the required work had been obtained from the City on May 27, 2021, but that he did not have the lumber necessary to complete the work by that time. He did assert that some demolition work consisting of the removal deck railing had commenced prior to June 30<sup>th</sup> and that additional demolition of the deck floor had followed.

Mr. Calle submitted that he was now confident that the supply of materials needed to complete the work would be on-site sometime next week and that the alteration of the deck as per the drawings in Attachment 2 to the February 26<sup>th</sup> Decision would be finished by the end of that week. He asked, therefore, that the TLAB amend the deadline to Friday, July 23, 2021.

In response to a question from the Chair, Mr. Calle confirmed that he is confident that he will have all the material and worker compliment to complete the project by the suggested date of July 23<sup>rd</sup>.

Mr. Condoy apologized for the length of time it has taken to complete the alteration of the rear deck and highlighted the stress and strain experienced by his family because of this ongoing situation. He also acknowledged that he is aware of the repercussions if the project is not completed by the requested extension deadline date, if granted, and promised to speak to his contractor in this regard.

He also apologized to Ms. Miletic and reiterated his hope of repairing, if possible, what he acknowledged was a strained relationship with his immediate neighbour. He asked that the TLAB granted the time extension.

Ms. Miletic expressed her complete frustration with this ongoing situation which she noted had now “*dragged on for four years.*” She questioned the veracity of Mr. Calle’s testimony regarding the status of the deck alterations referencing a series of photographs, entered as Exhibit 2 for the record, to support her assertions. She submitted that the photos, which were taken of the deck between July 1<sup>st</sup> and July 5<sup>th</sup>, 2021, clearly showed a lack of progress on the modifications to the rear deck as asserted by Mr. Calle.

Ms. Miletic stated that she was neither confident that Mr. Calle will complete the work by the due suggested nor that the deck will be built to comply as per the TLAB’s Decision and Order. Her concern is that the alteration of the deck will be temporary and that the size of the deck will be increased in the future.

Ms. Piatelli reiterated Ms. Miletic’s frustrations and concerns with this ongoing matter and directly blamed Mr. Calle for the lack of progress in complying with the TLAB’s Decision. She questioned why the easterly post had not been removed and the pillar/posts were still in place.

In a closing statement, Ms. Stewart asserted that the Appellant did not want to support the request for an extension of the deadline date for the alteration and construction of the rear deck but that she is nevertheless prepared to do so. However, she reiterated Ms. Miletic’s sense of frustration with this situation and that the Parties are again back before the TLAB.

She asserted that the Tribunal issued its Decision and Order in February 2021 and that her client suspects that the suggestion that materials were not available because of the pandemic is an excuse.

Ms. Stewart noted that the Appellant will be seeking an order for costs in this matter and requested that the Chair make an oral decision in this regard based on the issues raised in the Motion Hearing. In response, I advised Ms. Stewart that I was not prepared to issue an oral Order but that the TLAB’s Rules, specifically Rule 28 *et al*, permit a Party to seek costs by way of a written Motion with attendant submissions served on all Parties and filed with the Tribunal.

## **ANALYSIS, FINDINGS, REASONS**

I recognize that as the co-owner of 43 Holmesdale Crescent, the property immediately abutting the subject property, Ms. Miletic, and to a somewhat lesser degree Ms. Piatelli, has a direct interest in what is permitted to be built on the subject property. As outlined above, there has been a history of unsanctioned deck construction, including applications to the COA to legalize the structure, and building permit application issues including an 'Intention to Revoke Permit' issued by the City, which has caused stress and disruption, understandably, for Ms. Miletic and her sister.

This matter was last dealt with by the TLAB on appeal, and the Tribunal issued a Decision on February 26, 2021, that granted the requested variance facilitating the modification, reconstruction, and completion of the subject rear, 2<sup>nd</sup>-storey deck by no later than June 30, 2021. That date has come and gone and the work on the deck is still incomplete. The Applicant has now requested additional time to finish the work because of delays in obtaining building materials.

I find Mr. Condoy's heartfelt apology to be sincere and his promise sincere to have his contractor complete the work on the deck as required by the February 26<sup>th</sup> Decision. However, I also find Mss. Miletic's and Piatelli's frustration and anger to be palpable and justifiable.

While I am not completely convinced by Mr. Calle's reasons outlined in his Motion and oral testimony explaining the delay in the completion of the project, I am nevertheless prepared to grant the timeline extension, with some reluctance, to allow this matter to run its course and hopefully be resolved. I believe it is important and warranted for the neighbours, both Ms. Miletic and Mr. Condoy, to obtain closure of the outstanding issues related to the deck in this matter.

Although I am prepared to grant an extension of the timeline as requested, I suggested to the Parties that pushing back the deadline date to Monday, July 26, 2021, instead of July 23<sup>rd</sup>, to provide an additional buffer of three (3) additional days to be a more prudent approach. I believe this is more than enough time for the Mr. Calle to complete the require work given the testimony and promises heard at the Motion Hearing. The Parties agreed to this timing suggestion.

## **DECISION AND ORDER**

The relief requested for an extension of time in the Notice of Motion is granted on the condition that all work required to modify the deck, in accordance with the conditions of approval set out in the TLAB's Decision and Order of February 26, 2021, ***is completed on or before July 26, 2021.***

For greater clarity, the existing 2<sup>nd</sup>-storey, rear deck at 45 Holmesdale Crescent shall be modified, including the removal of the easterly post, platforms and joists, and wood beams, and the construction of the required privacy fence, all as shown on the approved plans attached to the February 26, 2021 Decision as Attachment 2, ***on or before July 26, 2021.***

If the modifications are not completed by that date, the variance shall not be authorized. No further extensions of time will be granted by the TLAB.

**Decision of Toronto Local Appeal Body Panel Member: D. LOMBARDI**  
**TLAB Case File Number: 19 264416 S45 09 TLAB**

2021-07-16

X 

---

Dino Lombardi  
Chair, Toronto Local Appeal Body  
Signed by: dlombar