

INTERIM DECISION AND ORDER

Decision Issue Date Thursday, September 30, 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: August 10, 2021

Deadline Date for Closing Submissions/Undertakings:

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 Proceeding for the Appeal respecting 75 Thirty Eighth Street proceeded by way of a videoconference on August 10, 2021, and commenced at 9:30 AM

After welcoming the Parties, I asked them to confirm that there had been no submissions made to the TLAB, since the last Hearing on May 12, 2021. The Applicant's lawyer, Mr. Flett, confirmed that he had not made any submissions to the TLAB. He stated that he had sent "conceptual plans" to the neighbours late in July, 2021, which meant that "they had had some time to review the plans, but not a whole lot of time". Members of the Opposition voiced their disappointment about the lack of adherence to the suggested timelines in my Interim Decision dated May 31, 2021, and what they saw as the lack of engagement from the Appellant. Mr. Flett apologized for sending out the plans later than expected, and his inadvertently deleting an email from Mr. Mukherjee in which the latter had asked for an adjournment.

The Parties in opposition to the Appeal requested that the Hearing be adjourned, since they had been provided with "nothing more than "an FSI number, and conceptual plans" by the Appellant. Ms. Abimbola, the City's lawyer, explained how she would have to share the Plans submitted by the Applicants with various departments at the City , including Transportation and Urban Forestry, to understand their perspectives, and concerns. This process of obtaining advice from other departments, would also help determine how many witnesses would be called on by the City to give evidence. Ms. Abimbola expressed her frustrations with the "conceptual plan" submitted by the Appellant, and that she did not have instructions on how to proceed with "conceptual plans".

After asking for the "TLAB's indulgence by granting an adjournment", Mr. Flett provided an account of how his client had many changes to his proposal in response to feedback from the community, including changing his plans to sever the Property. In

response to the Opposition's comments about "many Decisions from the TLAB acknowledging the importance of the Long Branch Design Guidelines", he stated that the "Design Guidelines" could not "become the fifth test". I pointed out that the Applicant's decision to not proceed with the severance in deference to the wishes of the community had already been noted, and lauded at the previous Hearing of May 12, 2021.

Addressing the issue of how to proceed forward, I advised the Parties that irrespective of the complexity of the case, the TLAB's practice was to allocate a specified, limited number of Hearing days to any Proceeding, and it was important to complete the Hearing, by way of Settlement, or contested proceeding within the allocated time. I explained that if the Parties exhausted the allocated Hearing time without completing the proceeding, it would be difficult to ask for more Hearing dates than what had been allocated. I proposed a different methodology, which would assume that the case would proceed as a contested proceeding, with appropriate deadlines, while the Parties could simultaneously have discussions with each other to arrive at a Settlement.

Mr. Flett agreed with the idea, and stated that he could send out the Plans "within two days", followed by discussions to settle the issue. "That way", he said "fewer Hearing days may be needed because the Parties would come to a Settlement, or at the least, a scoped Hearing". However, the Parties in opposition expressed a different point of view, where they wanted 3-4 weeks to see if they could arrive at a Settlement with the Appellant, and proceed to a contested hearing, only if they could not reach a Settlement. Ms. Gibson emphasized how interested the LBNA was in reaching a Settlement.

I agreed with the latter proposal, and set September 15, 2021 as the deadline for letting the Parties decide if a Settlement had been reached. I emphasized the importance of communicating with the TLAB with an update about the status of negotiations, irrespective of whether a Settlement had been reached. .

I proposed that the Applicant serve Notice on the neighbours with a list of proposed variances, and the updated plans, and recommended a two week period for Notice, in case a Settlement could not be arrived at within the 4 week period. On the question of providing further Notice to the neighbourhood, On, Mr. Flett opined that further notice was not necessary under Section 45.18.1.1 of the Planning Act, since the changes were "minor", precluding the need for further Notice

In response to concerns from the neighbours about being provided only with conceptual plans after the previous Hearings, Mr. Flett emphasized the Planning Act's specific directions to Applicants about what information to disclose when giving notice to the community, and how his client would comply with the same. Mr. Flett expressed concerns about how providing further Notice could "complicate" the process by bringing forward more Parties and Participants.

I reiterated that the Appellants could provide two weeks notice, following which the Witness Statements could be exchanged by November 15, 2021. In response to a question from Mr. Flett about the acceptance of Witness Statements from “new Parties and Participants who elect for status during the new Notice period”, I stated that I would also provide deadlines for individuals who wanted to elect as Parties and Participants, to the Hearing manageable, as well as prevent unwanted surprises.

I informed the Parties that the important dates were:

- September 15, 2021, to decide if a Settlement could be reached
- Two weeks Notice to the Neighbourhood in case a Settlement was not possible
- Submission of Statements by November 15, 2021

I advised the Parties that I would also set deadlines for new individuals to elect as Parties, or Participants, and determine how many days of Hearing was required to complete hearing the case. I also advised them that the TLAB would be in touch with the Parties to set a Hearing date, at the completion of the Notice period.

On September 17, 2021, the TLAB forwarded emails from Mr. Flett stating that the Settlement discussions were “premature” and that he would proceed to have discussions after the Notice period. Ms. Ambimbola and Ms. Gibson expressed their frustration over the lack of a response from the Appellant.

MATTERS IN ISSUE

The matters before the TLAB are:

- 1) Determining when, and how long Notice would have to be served on the neighbourhood
- 2) Deadlines to elect or Party or Participant status
- 3) Deadlines for submission of Witness Statements, Response and Reply
- 4) Determining how many days of Hearing were needed to complete the Hearing.

JURISDICTION

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

ANALYSIS, FINDINGS, REASONS

One of the questions that came up for discussion is the need for further Notice- Mr. Flett took the position that there was no need for Notice, since that there would be only one variance (related to FSI) before the TLAB, and that this change was so

“minor” that Notice could be waived under Section 45.18.1.1 of the Planning Act. I note that while Parties Mukherjee and the LBNA were in support of notice, Ms. Abimbola advised that she would not take a position on the issue of notice.

While I understand the Appellant’s concerns about additional Notice, I find that the new application before the TLAB (for a single house with a FSI of 0.48 on the existing lot) is substantially different compared to the proposal before the TLAB at the first Hearing, which involved a severance, and the construction of a dwelling on each of the lots- the impact of a single dwelling with an FSI of 0.48 x lot size on of 639.87 sq.m is noticeably different from the impact of a dwelling with an FSI of 0.56 x lot size on a lot half the size. The possible change in impact, and magnitude of the proposed dwelling, necessitates the need for further Notice.

I also note that the only other information available to the TLAB is that an FSI of 0.48 is being proposed, though the details of how this will be deployed remain unclear. Given the palpable concern, if not trepidation among community members about the deployment of this this FSI, I feel obligated to act with an abundance of caution, and ask that Notice be given to the neighbourhood, and provide the community members with an opportunity to elect for Party or Participant status

Another concern that was expressed repeatedly by the neighbours related to the information provided by the Appellant by way of sharing the plans for their proposal- I understand that the plans shared thus far have been “conceptual” in nature. While I am reassured by the Appellant’s stating that they would adhere to the requirements of the Planning Act when making submissions to the TLAB, I think that it would be pertinent to highlight the following Section from the City of Toronto’s COA Application, to illustrate what information is deemed necessary in terms of understanding a new application:

Required Plans

- *Plan of Survey, prepared by an Ontario Land Surveyor and showing all existing structures as currently built on the property.*
- *Draft Reference Plan of Survey – For Consent applications only; indicating the Part(s) to be severed and retained and/or easement(s)/right(s)-of-way, with boundaries, dimensions and area of each part clearly identified.*
- *Architectural Plans, which shall include the following as one combined PDF:*
 - i. Site Plan, indicating existing and proposed buildings on the site, distance from all lot lines, location of any easements/rights-of-way, location of buildings on adjacent lots, etc.*
 - ii. Floor Plans, all rooms labeled as to use and indicating existing and proposed windows and entrances*
 - iii. Elevation Plans, for all sides, indicating: height, grade, window and door openings*

I find that if the aforementioned information cannot be shared, it is difficult for community members to decide how they should proceed- the collective confusion is not in the public interest., I am also persuaded by Ms. Abimbola's submissions that it is difficult for her to decide on who to bring forward as a Witness, when presented only with conceptual plans.

I therefore direct the Applicants to circulate Notice within the appropriate neighbourhood for a 2 (two) week period starting October 4, 2021. Previously unregistered Parties and Participants have until October 18, 2021 to elect for Party or Participant status. The other deadlines were discussed at the Hearing and were acceptable to the Parties- Updated Witness Statements need to be submitted by November 15, 2021. Response Statements can be submitted by November 22, 2021, while Reply statements need to be submitted by November 29, 2021.

Given that there could be up to three different Expert Witnesses, besides a number of Witnesses from the community, it would be reasonable to set aside two days (2 days) to complete the Hearing

The TLAB will reach out to the Parties (including new Parties, if any) after October 18, 2021 to identify the dates to complete the Proceeding.

Lastly, I must state my disappointment at the lack of progress between August 10, 2021 and September 15, 2021- I understand that there has been no realistic engagement between the Parties, let alone an attempt at sorting out differences to arrive at a Settlement. While I understand the reasoning behind not commencing discussions till after the Notice period in order to include all Parties, my view is that it would have been appropriate for the Appellant to state the same at the Hearing held on August 10, 2021- had I been made aware of their position on negotiation and Settlement discussions, a different timeline would have been provided, to help with a quicker disposition of this matter.

It becomes important for me to decry the passage of an entire month without any discussions whatsoever, more so when the month in question was set aside explicitly to help with discussions and negotiation- it is unfortunate that during the time characterized as "gestation" at the Hearing, no train has left the station, let alone come within a reasonable distance of its destination..

INTERIM DECISION AND ORDER

1. The Applicant is directed to provide Notice in the appropriate Neighbourhood, with an updated list of variances, accompanied by Plans and Elevations for a two week period starting October 4, 2021.
2. Neighbours not previously involved with this matter, but want to engage with this process on a go-forward basis, can complete the requisite documentation to elect

for Party or Participant status, and submit the same to the TLAB by the end of day on October 18, 2021.

3. The TLAB will reach out to the updated list of Parties after October 18, 2021, to schedule a two day Hearing.
4. Updated Witness Statements from Parties, and Participants, where appropriate, may be submitted to the TLAB by the end of day on November 15, 2021.
5. Response Statements can be submitted by the end of day on November 22, 2021 while Reply Statements can be submitted to the TLAB by the end of day on November 29, 2021.

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