

MOTION DECISION AND ORDER

Decision Issue Date Wednesday, December 22, 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): Wesley Evan French

Applicant: Mario Silva

Property Address/Description: 22 B Ennerdale Rd

Committee of Adjustment Case File Number: 19 260447 STE 09 MV

TLAB Case File Number: **20 173548 S45 09 TLAB**

Hearing date: Thursday, December 16, 2021

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANT

Appellant	Wesley Evan French
Appellant Legal Rep	Brian Illion
Applicant/Participant	Mario Silva
Owner/Party	Jeffrey Vitorino
Expert Witness	Tae Ryuck
Participant	Tae Ryuck
Party	Jeffrey Vitorino
Party's Legal Rep	Sam Presvelos

INTRODUCTION

This matter arises by way of a Written Motion requesting a Written Hearing.

On July 8, 2020, the City of Toronto Committee of Adjustment (COA) issued its decision approving nine (9) variances in total applicable to 22 B Ennerdale Road (subject property). The variances were sought by the Applicant, Mario Silva, to facilitate the construction of a single, detached residential dwelling on the subject property.

The Applicant's neighbour, Wesley French, subsequently appealed the decision to the Toronto Local Appeal Body (TLAB) which set a date to hear the appeal. On August 24, 2021, Panel Chair S. Makuch, allowed the appeal and refused the requested variances.

BACKGROUND

The Applicant, through his solicitor, Sam Presvelos (Mover), Presvelos Law LLP, filed a Review Request of Member Makuch's Final Decision and Order (Decision) in this matter. Pursuant to Rule 31.5 of the TLAB's Rules of Practice and Procedure (Rules), the Applicant had thirty (30) days in which to file the Review Request and serve it on all Parties.

Mr. Presvelos served and filed the Review Request on September 24, 2021, one (1) day past the deadline due date. Then, in an email to the TLAB dated September 27, 2021, Mr. Presvelos advised the TLAB that the Review Request file previously submitted had been updated as directed by TLAB staff to include the following:

- a) Motion Record to extend the timeline for serving and filing of the Review Request; and
- b) Revised Request for Review with an index outlining all documents to be relied upon and a fully-complied PDF record.

In that email, he also explained that the Request for Review was served and filed *"a day late due to an inadvertent error in excluding a statutory holiday from the 30-day timeframe in which a party may bring a Request to Review."* Furthermore, he noted that full details of this issued were contained in the Applicant's Motion Record.

On September 29, 2021, Mr. Presvelos was advised by the TLAB that the file submitted could not be accepted as it contained external links and websites, and he was directed to separate the PDF document. He was also advised that the Review Request was deficient pursuant to Rule 31.6 of its Rules and, therefore, the processing of the Request would resume once the Applicant complied with those requirements.

In the Notice of Motion (Form 7), he stated that the Applicant is seeking a hearing date for the above-cited Motion seeking relief from *"...strict technical compliance and*

that the TLAB permit the late service and filing of the Applicant's Request for Review pursuant to TLAB Rules 4.4, 4.5, 2.12, and 2.6."

In support of the Motion, Mr. Presvelos filed a Motion Record containing Affidavits from Evan Presvelos (Presvelos Law LLP) and Jeffrey Vitorino, the owner of the subject property, as well as several attachments including case law in the form of Ontario Municipal Board and TLAB decisions.

In brief, the Mover requests the following:

1. *An Order that the Toronto Local Appeal Body accept the late filing of the Applicant's Request for Review which was served on opposing counsel and filed on September 24, 2021.*
2. *An Order for costs against the Appellant for unreasonably opposing the late filing of the Applicant's Request for Review; and*
3. *Such further and other Orders or directions which counsel may request, or the Toronto Local Appeal Body may require.*

What followed these submissions was a series of emails from the Applicant's and Appellant's solicitors regarding the matter of the Review Request and the Applicant's Motion to permit the late filing.

- October 4, 2021 - Mr. Presvelos responds to TLAB staff by providing the requisite documents.
- October 4, 2021 - the Appellant, in an email by way of legal counsel Brian Illion, objects to the filing of the Review Request asserting that it was past the deadline, and that it contains improper affidavit evidence from one of the witnesses who testified at the Hearing. He requests that the TLAB refuse to process the Review Request for, among other reasons, the Review Requestor's non-compliance with the TLAB's Rules.
- October 6 and October 8, 2021 - Mr. Presvelos counters with letters to the TLAB outlining the Appellant failure to comply with the Tribunal's Rules 31.10 and 31.13, respectively, by failing to file a Response to a Review Request and by raising new issues beyond those raised in the Review Request.
- November 19, 2021 - The TLAB sets a 'virtual' Oral Motion Hearing for December 16, 2021.
- December 1, 2021 – Mr. Illion requests that the Motion Hearing scheduled for December 16th be adjourned and rescheduled. He asserts that he has not received the Moving Party's Motion Record and has not been able to respond

which he suggests puts him at a disadvantage to argue the matter on the Motion date.

- December 3, 2021 – Mr. Presvelos submits that the Appellant and his solicitor were served with the Motion Record, that Mr. Illion did not indicate otherwise, and asserts that the request to adjourn is “...*unnecessary and premature.*”
- December 10, 2021 – Mr. Illion advises the TLAB by email that the request to adjourn the Motion for leave to extend the deadline to deliver the Review Request is withdrawn. On the same day, Mr. Presvelos’ office advised that the Applicant and Appellant have ‘settled’ (his words) and the Motion Hearing on December 16th is no longer required.
- December 16, 2021 – Mr. Presvelos advises the TLAB by email that the Motion seeking relief for extending the deadline for the Request to Review has been resolved with the Appellant.

In view of the latter emails advising the TLAB of the resolution of the Motion matter, I directed TLAB administrative staff to cancel the scheduled Motion Hearing. Unfortunately, staff failed to cancel the Motion Hearing or to issue notification of this cancellation. On the morning of the Hearing some Participants attended by way of the WebEx meeting platform although neither Party nor the presiding Member were in attendance since it was assumed that the Motion matter had been withdrawn.

The TLAB and the presiding Chair apologize to the Parties and Participants for this unfortunate circumstance and misstep. The Tribunal also apologizes for the failure in cancelling the Motion Hearing and for its failure to notifying the Parties and Participants of such in advance.

MATTERS IN ISSUE

The only two matters in issue are whether the TLAB should permit the late service and filing of the Applicant’s Request for Review pursuant to Rules 2.6, 2.12, 4.4, and 4.5 of the TLAB’s Rules and whether the Review Request should proceed to the Adjudicative Screening by the Chair.

JURISDICTION

Motions are the most flexible vehicle available in the Rules for the identification and resolution of issues.

These Rules, and those referenced above by the Requestor, are aided by the interpretive provisions of Rule 2, which includes that the TLAB is empowered to grant

the relief it considers appropriate *“to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner (Rule 2.11).”*

EVIDENCE

The evidence consists of the emails, communications, and documents received by the TLAB and cited in the ‘Background’ section above.

ANALYSIS, FINDINGS, REASONS

In his Motion Record, Mr. Presvelos argues that he erred in mistakenly believing that statutory holidays were excluded from the 30-day calculation prescribed by the TLAB’s Rule 31.5 for the serving and filing of the Review Request. As a result, he served the Parties with the requisite documents and filed same with the Tribunal the day following the deadline.

The Review Request file was further perfected on September 27, 2021, following direction from TLAB staff.

The Requestor asserts that the error in the late filing should be characterized as ‘minor’ and that submits that *“the opposing Party will not suffer any prejudice as part of this minor delay.”*

Given that the Applicant and Appellant have resolved the issue regarding the Motion request to extend the filing deadline to allow the Review Request to be considered compliant with Rule 31.5, and considering that the Appellant has withdrawn their objection, I am prepared to allow the Review Request to advance to the Adjudicative Screening by the Chair (or designate) pursuant to Rule 31.15 of the Tribunal’s Rules.

With respect to the request for an Order for Costs, I am not dealing with this request in this decision and order. If the Requestor wishes to pursue costs from the Appellant, there is a process to be followed pursuant to Rule 28 of the TLAB’s Rules. Rule 28.4 requires a written Motion, with the requisite documentation, to be served on all Parties and filed with the TLAB, and Rule 28.3 directs that the Panel Member who conducted the original appeal matter in which the request for costs is made will make the decision.

Furthermore, the Adjudicative Screening of the Review Request cannot occur until the decision regarding costs has been issued.

DECISION AND ORDER

The 'virtual' Motion Hearing scheduled for December 16, 2021, is cancelled and no further attendance or submission of documents regarding the Motion is required.

The requested relief sought by the Mover outlined in Point 5 in the Notice of Motion (Form 7) dated September 27, 2021, is granted; the TLAB will accept the Applicant's Request for Review submission served on the Parties and filed with the TLAB on September 24, 2021.

The Order for an award of costs against the Appellant sought by the Mover of the subject Motion has not been considered as part of this Decision and Order. The Applicant is required to submit a written Motion for Costs served on all Parties and filed with the TLAB pursuant to Rule 28 of the TLAB's Rules.

A Motion for Costs will then be considered by the Panel Member who conducted the Hearing of the original appeal matter as per Rule 28.3 of the TLAB's Rules.

The Request for Review will not proceed to the Adjudicative Screening by the Chair (or designate) as per Rule 31.15 of the TLAB's Rules if a Motion for Costs is filed and until a decision is issued by the Panel Member of the first instance.

If problems arise with this decision and order, the TLAB may be spoken to.

X 

D. Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar