

# MOTION DECISION AND ORDER

**Decision Issue Date**      Tuesday, October 26, 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): Nanu Alexandru Ion Dragos

Applicant(s): Peter Vozikas

Property Address/Description: 6 Benstrow Ave

Committee of Adjustment File

Number(s): 20 170209 WET 01 MV

**TLAB Case File Number(s): 21 132798 S45 01 TLAB**

**Last Submission Date: July 19, 2021**

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

**DECISION DELIVERED BY : S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

APPLICANT                      PETER VOZIKAS

OWNER                              SANDEEP BHARDWAJ

NEENA SHARMA

APPELLANT                      NANU ALEXANDRU ION DRAGOS

## INTRODUCTION AND BACKGROUND

The background and history of this Appeal, resulting from a decision made by the Committee of Adjustment (COA), dated March 9, 2021, respecting 6 Benstrow Crescent is recited in the Interim Decision dated August 23, 2021.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
TLAB Case File Number: 21 132798 S45 01 TLAB**

On September 6, 2021, Mr. Alexandru Dragos Ion Nanu, the Appellant and the Party who submitted this Motion, sent an email clarifying his understanding of various deadlines and issues. After discussing the deadlines, Mr. Nanu stated that he not received a response from the TLAB regarding the dates for Response and Reply to the Motion. He also emphasized that the Motion for disclosure was “aimed at the Community Planning Etobicoke- York ( particularly Ms. Ameena Khan)”, and opined that the Applicants were not “effected by this”.

Mr. Nanu identified Mr. Peter Vozikas to be the Applicant, before claiming that Mr. Vozikas “cannot discharge his responsibility regardless of whether he is legally representing or not the owners in the TLAB. Proceedings” . He also claimed that the “Owners cannot discharge the Applicant of his obligations unless “an act to this effect is presented”. Mr. Nany added that he “thinks” that until “this happens”, (i.e. an act needs to be presented) , “the Owners cannot discharge the Applicant of his obligations”.

Lastly, in Paragraph 3.6 of his submission, Mr. Nanu asserted that a proper decision “cannot be made without the rest of the Motions for Discovery being addressed”. He also complained about how he was informed that he would be contacted by persons in the TLAB for guidance and advice, and that a case manager would be named, and informed that none of these actions had taken place..

The Agent for the Applicant, Mr. Peter Vozikas sent in a submission, received by the TLAB on September 14, 2021, while Ms. Neena Sharma, one of the Applicants, sent in a Reply to the Response, received by the TLAB on September 13, 2021.

Ms. Sharma, in her Reply dated September 13, 2021, informed the TLAB that Mr. Vozikas “does not want to pursue this matter with us”. She added that she was “sure that the Architect had disclosed all the documents and information with Mr. Nanu”, and that she had “no further communication with the Zoning Review Engineer, and all communication that she had with the architect had been disclosed as well”. She also pointed out that “Point 2 ,3, 4 are directed towards community planning Etobicoke York District Staff. However, the statement regarding other 2 storey platforms in the side yard in the neighbourhood is incorrect because there is a house on Taysham Crescent , which has a similar build to the house we intend on building. Also, when we informed our architect regarding the characteristics of the neighbourhood, he mentioned that “the current bylaw allows for a two-storey home to be constructed on these lands... everyone on the street can all have the same”

In his Response received by the TLAB on September 14, 2021, Mr. Vozikas answered the questions raised by Mr. Nanu in the latter’s Motion dated July 24, 2021. He described the proposal in the side-yard as a drive through portico with an open air balcony above, and a second storey addition over the existing garage, towards the rear, before describing the proposed dimensions of the addition. He also clarified that the portico/balcony structure is on the south/southeast corner of the lot in the front yard. In response to questions about the alleged “confusion” of terms and “inconsistencies”, Mr. Vozikas stated that he was “unclear about the implication of the question”, before reciting the specifications of the COA application, including the requested variances,

both from By-Law 569-2013, as well as the Etobicoke By-Law. In response to Question 2.4, where Mr. Vozikas was asked if he “realized by the errors and omissions the engineer made in the Zoning Review, the ones the Community Planning made in the Staff Report, and in the COA Notice of Hearing?”, Mr. Vozikas recited the variances as depicted in the Zoning Notice.

Mr. Vozikas declined to respond to Question 2.5 ( regarding why the alleged “errors and omissions” were not corrected by the Applicant) as well as Question 2.6 ( where he was asked about the existence of a “relationship” between Mr. Vozikas, the Property Owners and Community Planning ), though he did state that the question implied that he (Mr. Vozikas) had “deliberately misled the Members” . In response to Question 2.7, Mr. Vozikas clarified why he deemed the building at 6 Benstrow Ave to be a two storeyed building, and not a single storey building. In response to Question 2.8 ( a question about interpreting the Main and Ancillary Building definitions such that the structure “encroached” on the side property line setback), Mr. Vozikas stated that the “main building is the entire structure including all floors and garage”, before adding that “the ancillary structure would be considered as the portico with balcony”.

In response to Question 2.9 which asked “how” the 0.88 metres setback on the side property had been measured, Mr. Vozikas replied that the measurements had been made by a Registered Ontario Land Surveyor.

In response to Questions 2.10 ( i.e. allegations about “justifying errors and interpretations to allow the infringement of the provisions of By-Law 569-2013”, Mr. Vozikas stated that he did not “understand” the question. In response to Question 2.11 about his credentials, Mr. Vozikas said that the Ministry of Housing Website could be searched regarding his credentials. Lastly, he declined to “change or recall your application” if given the opportunity.

## **MATTERS IN ISSUE**

The main question before TLAB is whether or not discovery should be ordered regarding the following, as excerpted from the Motion put forward by the Appellant:

1. “Disclosure of all communications between Community Planning Etobicoke York District personnel and the Applicant Peter Vozikas, the Owners of 6 Benstrow Avenue property and the Zoning Review Engineer”.

2. “Disclosure of the guidelines and procedures that the Community Planning Etobicoke York District uses to review the application, to analyze the desirability of a proposed development and to make comments on it”.

3. “Disclosure of the training and the personnel's minimum knowledge requirement for the job of reviewing the proposed development applications”.

4. “Discovery of the cause of the errors and confusions in the Community Planning Etobicoke York District Staff Report”, followed by a number of questions, which are not recited here.

## **ANALYSIS, FINDINGS, REASONS**

It is important to point out that the very outset that the Affidavit dated July 24, 2021, submitted by the Appellant, Mr. Nanu is incomplete, because the jurat ( where a designated Commissioner of Oaths, signs the document- this is to be found at the very end of the Affidavit) is unsigned. In other words, the Appellant may have sworn the statement to be true, but it is not clear in whose presence this was sworn, given that there is no signature where the Commissioner should have signed. The lack of a completed, sworn affidavit constitutes adequate grounds to refuse the Motion, in its entirety.

Notwithstanding this major flaw in the Affidavit, I have considered the questions raised by the Appellant, in conjunction with the responses submitted by the Applicants, and have made the following findings, as presented below: :

Mr. Nanu relies on Rule 18.1 of the TLAB’s Rules in support of the various items for he asks that discovery be ordered:

**18.1 *The TLAB may make an order for discovery for a Party to obtain relevant and necessary information from any Person.***

However, it is important to also note the following Rule:

**18.4 *An order for discovery shall only be issued if the Party seeking an order for discovery has already requested the information sought and it has been refused or no answer has been received from the other Party, and the TLAB is satisfied there is good reason to order discovery.*** ( my emphasis).

I appreciate Mr. Nanu’s efforts to obtain the information he wanted, and understand that it is the lack of a response from the City that has resulted in the filing of the Motion before me.

However, as Rule 18.4 above makes it clear, there has to be a specific and demonstrable rationale, for the Motion to be successful. After reading his submission in detail, I note the following excerpts from his affidavit dated July 24, 2021, which provide rationale for discovery:

- **“*The Staff Report contains error and confusions*”.**
- **“*The purpose of questions 4.1 to 4.6 have the purpose to clarify the Planner’s understanding regarding the compliance of a two storey structure containing an open platform in the side yard, encroaching the***

***side line setback. The answers to these questions are very important in establishing the validity of the application.”***

- ***“The questions 4.7 and 4.8 have the purpose to clarify the basis and to validate the results of the COA decision analysis stated as having been performed in the surrounding area of 6 Benstrow Avenue. The answers are important to establish the contribution, if any, such an analysis brings to the Staff Report and to the COA decision process.”***
- ***“The questions 4.9 to 4.11 have the purpose to understand the source of the errors and of the confusing information contained in the Staff Report, and is of paramount importance in the decision process of TLAB”***

Before proceeding further, it is important to draw attention to a golden rule in adjudication- Everybody is innocent until proven guilty. Nothing is proven by one of the Parties insinuating that other Parties have committed errors; there is nothing of substance to mere suspicions that various individuals involved in processing the case having improper relationships. No agent or Party has to discuss their professional qualifications, or explain why they retained the agent in question, to the satisfaction of the ***opposing Party*** ( my emphasis), because the former does not need the approval, much less the approbation of the latter, to retain the agent in question. A given Party can retain whomever they want to as an agent to present their case to the COA; the City can assign a planner whom they deem appropriate to examine and comment on the file, without having to explain whom they chose, and why they chose the person in question.

There are no supportable grounds on the basis of which the Agent for the Applicants, or the planner employed by the City of Toronto have to list, or explain their qualifications, and experiences to other Parties.

I note that the Appellant’s allegations of “confusion” and “errors” on behalf of the actions of City staff do not discuss what the Appellant expects to find, or how this material will impact the final result. The Moving Party provides no information whatsoever about what may be discovered that is of such indispensable importance to themselves, or the TLAB, other than an assertion about its purported importance.

Specifically, it is important to note that in this case, the Report prepared by Ms. Ameena Khan, Planner, and signed by Ms. Luisa Galli, Acting Director for Planning in the Etobicoke-York district , dated February 24, 2021, discusses concerns about the platform ( i.e. deck at the back of the house), and recommends that the Panel restrict the area of the deck to 10 sq. m. There is no discussion about the other variances requested by the Applicant, on the basis of which I find that Ms. Khan has no comments regarding the other variances. Whether to comment, or not comment on other variances is Ms. Khan’s prerogative; she is not answerable to the Parties about how and why she commented on some variances, and not others.

I disagree with the Moving Party’s strategy of putting the onus on the City to demonstrate the appropriateness of the latter’s processes, when there is little to question the processes, and consequently find that discovery cannot be ordered. Given

that the City's involvement is restricted to the preparation of a Report which raises a concern with a single variance, with no comments on other variances, I find that there is insufficient reason to order discovery, because the Appellant's objections question all the requested variances, and just not the variance discussed by the City.

I also note that while the Parties have to be intimated by the Tribunal ( the Committee of Adjustment in this case) about its decision, and reasoning; however, there is no obligation on the part of the Tribunal to "satisfy" the Parties about its reasoning. In this case, the COA has stated that the application at 6 Benstrow Ave. was approved because it met the four tests under Section 45.1 of the Planning Act, and has consequently provided sufficient reasoning. I

Lastly and importantly, I would also like to remind the Parties of the "*de-novo*" nature of the Hearing before the TLAB – "*de novo*" denotes that the Hearing before the TLAB is "new" or "fresh", **without reference to what took place at the COA hearing.** ( my emphasis) In other words, the TLAB pays no attention, and attaches no weight to the entire COA proceeding- Parties cannot rely on the results of the hearing conducted by COA to justify why they should win before the TLAB. The Parties have to submit new Witness Statements to the TLAB, before the Hearing, to explain their support, or objection to a given Appeal, based on their own research.

Given the reasons provided above, the Motion for discovery for the items listed in the "Matters in Question" Section of this Decision is refused.

It would be pertinent to comment on an interesting "request for clarification" made in the Motion- it is suggested that Mr. Vozikas ( as the Applicant)cannot be "discharged" of his obligations unless an "act to this effect" is presented.

The onus of demonstrating the existence of such an "act" rests with the Moving Party, and not the Respondents- the Moving Party cannot expect to make an unfounded allegation, and expect the Respondents or the TLAB, to produce proof to refute the allegation. By way of clarification, the owners of the Subject Property have the ability to change their representative, or Agent, whenever they deem it appropriate to do so- to suggest otherwise is erroneous.

Given the confusion about the TLAB Hearing process, I find merit to the Appellant's request for a teleconference before the Hearing- the purpose of the Prehearing Conference is to explain the procedure to be followed at the TLAB Hearing, highlight what documents need to be submitted to the TLAB, as well as answer any questions of clarification. It is important to note that no legal advice will be given to the Parties about how they should argue their case before the TLAB, nor will this Motion for discovery be revisited or reheard in any form.

I have therefore requested the TLAB staff to contact the Parties to see when a two (2) hour Pre-hearing conference ( held by way of Webex) can be scheduled in late November 2021.

## MOTION DECISION AND ORDER

1. The Motion for discovery put forward by the Appellant is refused in its entirety.
2. A two hour Webex Pre-hearing conference will be scheduled by the TLAB Staff in late November 2021, where the process to be followed for the TLAB Hearing will be explained to the Parties, followed by a discussion of what documents need to be submitted to the TLAB, and deadlines to submit the same.

So orders the Toronto Local Appeal Body

X



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body