

DECISION AND ORDER

Decision Issue Date Wednesday, September 01, 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 & August 30, 2021

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

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

INTRODUCTION AND BACKGROUND

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 3rd 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 3rd, 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 which were also to be provided to the Parties and served on the Participants.

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 terms of the proposed

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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.

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.

Ms. Stewart asserted that in her opinion, given the upcoming holiday, there was not sufficient opportunity between then and the July 8th 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 8th be adjourned. In a decision dated June 30, 2021, the TLAB granted the adjournment and directed that Tribunal staff canvas the Parties and Participants for a new date to conduct an expedited Settlement Hearing. That new Hearing was rescheduled for August 30, 2021.

On the August 30th return date for the expedited 'remote' Settlement Hearing, the following Parties and Participants attended virtually: Ms. Stewart and the Appellant's expert planning witness Franco Romano, as well as Party David Campbell and his solicitor William Roberts and expert planning witness Terry Mills.

Also in attendance were Stewart Hillgrove and Jan Sucharda (representing his spouse, Lynda Sucharda) both of whom elected Participant status in this matter.

At the outset of the Hearing, I advised that after monitoring the TLAB AIC website and checking the file for a week prior to the Hearing, I was disappointed to see that the Appellant had not filed any new documentation related to a settlement or associated revised drawings as directed in my June 30, 2021, decision.

As a result, I asked Ms. Stewart to clarify this situation and explain the failure to update the TLAB as to the progress of settlement discussions.

She apologized and advised that a 'last minute' issue raised by Mr. Campbell had arisen shortly before the Hearing and that that had prevented the terms of the settlement being finalized along with associated plans. She stated that the Parties were very 'very close' (her words) and requested that the presiding Member recess the Hearing for approximately an hour to allow further confident discussions and a resolution of the issue so that a settlement could be finalized.

MATTERS IN ISSUE AND JURISDICTION

Under Rule 2.10 of the TLAB's Rules of Practice and Procedure (Rules), the TLAB is empowered to grant exceptions or other relief to the Rules as it considers appropriate, to enable it to effectively and completely adjudicate matters in a 'just, expeditious and cost-effective manner'. While Rule 19.1 of the TLAB's Rules expresses the Tribunal's commitment to encourage Parties to settle issues in dispute, Rule 19.2 directs that Parties who arrive at a settlement serve the terms of the proposed settlement "**on all Parties and Participants** and file same with the TLAB **at the earliest possible date** (my emphasis)."

In this instance, the Appellant has provided no settlement documents in advance of the rescheduled Hearing and has asked that the TLAB accommodate further private discussions to work out a last-minute issue, so a final settlement can be concluded. At this late date, there is no, or very limited opportunity for the Appellant to file relevant documents (including revised plans) and to provide Mr. Campbell and his solicitor as well as the Participants with a reasonable prospect of carefully reviewing those documents.

Furthermore, the Appellant has not submitted revised plans for a new Zoning Examiner's Review

The issue, then, is whether to adjourn the matter to allow further confidential, discussions between the Appellant and Mr. Campbell and once finalized direct that terms of any settlement and associated plans be served on all Parties and Participants thereby allowing sufficient time for review. Furthermore, should the expedited settlement Hearing be rescheduled to a date sometime in September 2021 once the documents have been circulated and a new zoning review obtained.

ANALYSIS, FINDINGS, REASONS

Although both Ms. Stewart and Mr. Roberts advised the TLAB at the June 3, 2021, Mediation session that a settlement, in principle, had been reached between the Appellant and Mr. Campbell, but that time was required to formalize Minutes of Settlement (MOS) that appears to not have transpired. In fact, by the rescheduled Hearing date of August 30, 2021, no such documentation had been filed with the TLAB.

As a result, and in view of this situation, I find that the only fair and sensible solution is to recess the Hearing to allow additional time for discussions to occur outside of the Hearing day limitations regarding the recent 'snag' in the resolution of the terms of settlement.

I take this decision to adjourn the Hearing seriously, and make it reluctantly considering that the Tribunal Rules establish that the TLAB is committed to fixed and definite hearing dates. Given the circumstances, however, I find the request for additional Hearing time to resolve new matters unpersuasive. The Appellant has had sufficient time to resolve this matter and I find no solid reason to allow additional

discussions between the Appellant and Mr. Campbell within the parameters of the Hearing day to the disadvantage of the Participants in attendance.

Even if the Parties are successful in arriving at a 'finalized' MOS and associated revised plans following a recess of the Hearing, I am reluctant to then ask the Participants (and myself) to 'scramble' to review and appreciate those documents within the constraints of a very time limited manner and within the structure of the Hearing day. I find this would be problematic and a circumstance that would contravene the principles of procedural fairness and natural justice for the Participants who have not been involved in the settlement discussions to date.

As a result, I find that an adjournment would be the most reasonable and fair-minded approach to this situation.

Rule 23.3 provides the presiding Member with guidelines to be considered in deciding whether to grant an adjournment. Considering the circumstances and on the basis that the Appellant and the other Parties and Participants agree that there would be no prejudice or hardship as a result of a rescheduled Hearing date, and given that all are in agreement, the TLAB directs that the matter be adjourned as a courtesy to allow the finalization of the terms of settlement.

Furthermore, Ms. Stewart is directed to update the TLAB as to the status of these discussions and the timing for finalizing the settlement and the submission of the relevant and requisite documents. She is also directed to serve that documentation on the Participants in a timely manner. Once this has been confirmed to the TLAB, Tribunal staff will be directed to canvas the parties and Participants for their availability for a rescheduled Hearing date.

DECISION AND ORDER

The Hearing on August 30, 2021, regarding the above-referenced matter is adjourned.

The Appellant's legal representative will apprise the TLAB of the status of any Minutes of Settlement and associated revised plans and file same with the TLAB and serve the terms of the proposed settlement on all other Parties and Participants at the earliest possible date.

In the event that a settlement is ultimately finalized, that above-referenced filing will include a revised and final set of drawings, a revised list of variances being requested and corresponding new Zoning Notice, and a copy of the terms of Settlement.

Once confirmed, TLAB staff will canvas the Parties and Participants for a new Hearing date for an expedited Settlement Hearing of this matter, and issue a new, revised Notice of Settlement Hearing to reflect the rescheduled date once a date has been secured. All previous submission and filing dates will remain as before.

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The TLAB may be spoken to if difficulties arise in implementing this Decision and Order.

2021-08-31

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