

INTERIM DECISION AND ORDER

Decision Issue Date Monday, February 28, 2022

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): 1941120 ONTARIO LTD

Applicant(s): 1941120 ONTARIO LTD

Property Address/Description: 57 MAJOR ST

Committee of Adjustment File

Number(s): 20 138367 STE 11 MV (A0395/20TEY)

TLAB Case File Number(s): 20 209020 S45 11 TLAB

Hearing date: July 2, 2021 and September 1, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. GOPIKRISHNA

REGISTERED PARTIES AND PARTICIPANTS

| Name | Role | Representative |
|---------------------|---------------------------|------------------|
| 1941120 Ontario Ltd | Applicant/Owner/Appellant | Martin Mazierski |
| Maria Perin | Party | |
| Jenny Sit | Party | Robin Penslar |
| Robert Brown | Local Knowledge Expert | |
| Robin Penslar | Participant | |

INTRODUCTION AND BACKGROUND

The purpose of this Interim Order and Decision is to provide direction to the Parties involved with 57 Major Street about what needs to be done before the next Hearing is convened.

The Parties met on February 11, 2022 and February 14, 2022, to give evidence for the Appeal respecting 57 Major Street. The Applicant, Mr. Xinde Xia, provided evidence in support of his proposal, with the support of Mr. Martin Mazierski, a lawyer. Mr. Robert Brown, a Local Knowledge Expert, who testified against the Appeal, also completed his evidence by way of an Examination-in-chief, and cross-examination. Ms. Maria Perrin, one of the Parties opposed to the Appeal, commenced her Examination-in-Chief on February 14, 2022. She stated that she had trained to be an Architect with more than 25 years of experience as an Architect, a former faculty member in the department of Architecture at the University of Toronto, in addition to being involved with many architectural projects in downtown Toronto, including the neighbourhood involving the Appeal before me.

Ms. Perrin complained about the accuracy of the drawings submitted by the Applicant, and referred to a different set of drawings, which she had obtained on her own (as opposed to submissions by the Applicant), henceforth referred to the "Opposition's drawings". I remarked that Ms. Perrin's drawings, as put up on the screen, were not legible, and asked her to improve the legibility of the Opposition's drawings. However, despite the best efforts of the members in Opposition, their drawings could not be made bigger, or more legible.

The Opposition insisted that that their drawings were more accurate than that of the Applicant's drawings, leading to a debate between the Applicants' lawyer, and themselves. At the end of the discussion, Mr. Mazierski agreed to an adjournment of the Hearing, till he could get a Zoning Notice prepared by the Zoning Examiner- it may be noted that his client had originally proceeded by way of waiver.

The Opposition asked Mr. Mazierski to explain the basis for the Zoning Examiner's Notice, to which the former explained that they would require the Applicant to submit information about the proposal, on the basis of which the Examiner would proceed to identify variances. The Opposition expressed reservations about what the Zoning Examiner would conclude, because the issue at hand, was the information supplied by the Applicant, and not the methodology itself.

I directed Mr. Mazierski to start the process of obtaining the Zoning Notice, and stated that I would send out instructions about how to proceed with the Hearing, before adjourning the same.

MATTERS IN ISSUE

The question before me is to provide instructions to the Parties about how to proceed, and identify what needs to be completed, before the Proceeding commences again.

JURISDICTION

The TLAB follows its own Rules of Procedure and Process (“the Rules”) in jurisdictional matters.

ANALYSIS, FINDINGS, REASONS

It is important to briefly discuss the issues before the TLAB, before discussing how to proceed:

- The Applicant did not obtain a Zoning Notice, before or after, they commenced their Appeal. While it is an Applicant’s right to proceed by way of a waiver, the best practice is to obtain a Zoning Notice, because it means that a neutral third Party has completed the process of identifying the variances. I note that while Zoning Examiners are but human, and Zoning Notices not infallible, it is standard practice to rely on Zoning Notices for making findings.
- The Opposition questions the accuracy of the information that is being given to the Zoning Examiner for preparing the Notice- their issue is not how will the Examiner identify the variances, but what will the Examiner rely on to come to their conclusions. The Opposition has consistently claimed that the erroneous (from their perspective) information supplied by the Applicant, will result in variances that are seemingly “minor”, but are so significant and substantial, that they cannot be considered “minor”.
- The Opposition claims to have an alternate set of Plans and Elevations (i.e. the “Opposition drawings) of the Property at 57 Major Street, that will help identify how significant the proposed changes are to the Property. The issue with the Plans and Elevations, as made available to the TLAB, is their lack of legibility.

While the Zoning Notice is often relied upon for the purposes of identifying variances, I note the Opposition has concerns about the data that is the basis for these variances. The TLAB does not have a prescribed methodology to investigate such an allegation.

Under the circumstances, I find that it would be reasonable to:

- Have the Applicants confirm the magnitude of the requested variances, by way of a Zoning Notice. The advantage to obtaining the Zoning Notice is that it would confirm the accuracy of the variances, *assuming* (my emphasis) that the Applicant’s information is accurate. When the Zoning Notice is ready, it may be submitted to the TLAB, and the Parties in Opposition.

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- The Opposition may submit a legible copy of the “Opposition drawings” such that the dimensions are readable, and can be used for the purposes of calculations, as well as their calculations, accompanied by commentary, where appropriate. These submissions may be relied upon for evidentiary purposes, to establish the Opposition’s position, and its nexus to the Appeal before me. The Opposition can include any other material they deem important to establish the source, and accuracy of their information.

The Parties in Opposition are given time up to April 30, 2022, to complete the requested submissions, to the TLAB, with a copy to the Applicants.

- The Parties can introduce any other material on the Record, with an emphasis on its relevance to the Appeal before me by way of Motions, and Cross Motions. I would prefer to hear the Motions, and Cross Motions by way of Writing, in the interests of time, and help the Parties have a clear picture of what will be included, and excluded, from the Record.

Given that the timelines for obtaining a Zoning Notice are not predictable, the Parties may speak to the TLAB for advice, or direction, should any procedural issue arise. No Hearing dates will be canvassed till the completion of the Zoning Notice by the Applicants, and the submissions by the Appellants.

INTERIM DECISION AND ORDER

- 1) The Applicant needs to contact the TLAB after obtaining the Zoning Notice, after which the TLAB will commence the process of identifying a Hearing date to complete the Proceeding.
- 2) The Parties in Opposition are given time till April 30, 2022, to submit legible copies of the “Opposition’s drawings”, and calculations to illustrate their position with commentary, where possible. Any other submission, about the source of their information, and accuracy may be submitted.
- 3) The Parties may bring forward a Motion for the inclusion of any other material on the Record, with the Motion clearly speaking to the nexus between the material being submitted to the TLAB, and its nexus to the Appeal before me. The TLAB’s preference is to hear the Motions, and Cross-Motions, by way of Writing.
- 4) The TLAB will not contact the Parties to identify a Hearing date until the completion of Steps (1) and (2) in this Interim Decision and Order.

The TLAB may be spoken to for direction on any issues of a procedural nature, including deadlines.

So orders the Toronto Local Appeal Body

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', is centered on a light gray rectangular background.

X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body