

ORDER

Decision Issue Date Wednesday, March 23, 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): GARY ROXBOROUGH

Applicant: LATTAG STUDIO INCORPORATED

Property Address/Description: 255 SEATON STREET

Committee of Adjustment Case File Number: 20 234883 STE 13 MV (A1216/20TEY)

TLAB Case File Number: 21 162991 S45 13 TLAB

Hearing date: Tuesday, March 15, 2022

DECISION DELIVERED BY *D. Lombardi, TLAB Chair*

REGISTERED PARTIES AND PARTICIPANT

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|------------------------|---|
| Appellant | Gary Roxborough |
| Appellant's Legal Rep. | Jordan Allison |
| Applicant | Lattag Studio Incorporated |
| Party | Jordan Allison |
| Party | Shobhit Mathur |
| Party's Legal Rep. | Samantha Lampert |
| Party | Cabbagetown South Residents Association |
| Party | Tanya English |
| Party | Howard Bortenstein |

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| Party | Brendan Michael Hamilton |
| Party | Wallace Immen |
| Party | Gail Moore |
| Participant | Jeff Lookkong |
| Expert Witness | Nicholas Bogaert |

INTRODUCTION AND BACKGROUND

The appeal in this matter is for 8 variances to permit the Applicant to alter the existing two-storey semi-detached dwelling on the property known as 255 Seaton Street (subject property) by constructing a third-storey addition, a rear third-storey balcony, a rear deck, a front porch, a front walkout, and a secondary suite in the basement.

To date, the matter has consumed 3 Hearing days – Hearing Day 1 on Oct. 6, 2021, which was converted to a TLAB-led Mediation session; Hearing Day 2 on January 25, 2022; and Hearing Day 3 on February 15, 2022.

Hearing Day 3 concluded with the cross-examination of Party Jordan Allison by Ms. Lampert. It became apparent at that time that a 4th Hearing Day would be required in this appeal matter.

Before adjourning that Hearing Day, I outlined for the Parties how Hearing Day 4 was expected to unfold.

I noted that Mr. Bortenstein had advised that he intended to re-examine Mr. Allison and so the Hearing Day would commence with that reexamination. Once completed, I indicated that would then hear statements from those persons who elected Party status in this appeal in opposition to the proposal; Mr. Bortenstein asked to be the last Party to provide a statement.

Following the end of Hearing Day 3 on February 15th, I directed TLAB staff to canvas the Parties for their availability for a 4th Hearing Day and, once that date was confirmed, to issue a Notice of Hearing Day 4.

Staff provided me with 3 possible dates in March – the 16th, 17th, and 18th. I responded that I was only available on March 17th; unfortunately, that date did not work for all.

I then asked staff to canvas for dates into April and I offered two possible dates - April 21st and 22nd. Mr. Immen responded by email that he was unavailable for either date; he confirmed his earliest availability as Tuesday, May 3rd.

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In an email to the Parties and Participants on March 7th, I advised that scheduling a fourth Hearing Day without Mr. Immen would be problematic given that as he had elected Party status in the matter, the TLAB must allow Parties to provide testimony orally and be cross-examined if required at Hearings. I asserted that Mr. Immen would be provided with the same opportunity to attend virtually on Hearing Day 4 as all other Parties in this matter.

I proceeded to provide five (5) possible dates in early May for Hearing Day 4 – May 3rd, 4th, 10th, 11th and 12th and I asked staff to advise the Parties to make every effort to make themselves available on one of those dates.

On March 7th, Ms. Lampert responded in an email indicating that of the dates provided, above cited, she would only be availability on May 3rd and 4th. She outlined her unavailability beyond those dates because of an anticipated three-week commitment to a separate Hearing before the Ontario Land Tribunal (OLT) commencing on May 9th and a further 10-week OLT Hearing in commencing in June 2022, following that.

She requested that the TLAB reconsider the dates in April on which all others except for Mr. Immen are available.

Ms. Lampert asserted that her client would be significantly prejudiced by further delays to accommodate Mr. Immen's schedule and advised that her client would accede to allowing Mr. Immen to provide a written statement or video recording instead.

In separate email responses dated March 8, 2022, Parties Bortenstein and Allison strongly objected to not having Mr. Immen present on Hearing Day 4, citing his position as Chair of the Cabbagetown Heritage Conservation District Advisory Committee. They asserted procedural unfairness to the Parties if denied the opportunity of cross-examination; both requested that the TLAB accommodate Mr. Immen and allow him to attend and provide his oral testimony at Hearing Day 4.

I was also advised that Ms. English, another Party in opposition to the proposal, was only available on May 11th and 12th.

In his March 8th email, Mr. Bortenstein proposed an alternative option to the Tribunal. He suggested that the TLAB consider scheduling a half-day session on April 21st or 22nd and a half day session on May 3rd or 4th which he submitted would allow both Ms. English and Mr. Immen to be in attendance virtually at Hearing Day 4 and to participate directly in the proceeding.

Due to the difficulties the TLAB was encountering in securing an agreed to date for Hearing Day 4 from the Parties and the apparent inability of the Parties to arrive at a consensus in this regard, I directed staff to quickly schedule a Teleconference call for February 15, 2022, to address this issue.

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The following persons attended by telephone: Samantha Lampert, Jordan Allison; Tanya English, Karen Marren, Howard Bortenstein, Brendan Michael Hamilton, Wallace Immen, and Jeff Lookkong (a Participant).

I acknowledged to those in attendance that I was cognizant of the Parties and Participant's concerns that this hearing matter has been, in their opinion, taking an unusually long time, the appeal having been filed in June 2021.

I submitted that it is uncommon for applications for variances before the TLAB with this many Parties and witnesses to consume 3 Hearing Days. I suggested that the reason that this appeal matter was now scheduling a fourth Hearing Day was partly due not only to the number and scope of the variances being requested but also because I've allowed, and will continue to allow, witnesses proffered by each side fulsome and equal time to put forward their positions forward.

Nevertheless, due to the number of Parties and representatives and their schedules going forward, we are now finding it difficult to find a date on which everyone is available and, therefore, to secure a fourth Hearing Day. I indicated that the reason for the Teleconference call was to bring the Parties together and that I was prepared to work assiduously to resolve this issue expeditiously and to find an agreeable date to complete the hearing of this matter.

This, I advised, would allow me to draft and issue a decision in this appeal matter in a timely fashion thereby achieving a key mandate of the TLAB which is to dispose of appeals in a just, expeditious and cost-effective determination of every proceeding on its merits.

SUMMARY

Following a great deal of discussion with the Parties and Participants, and with the assistance of all in attendance on the Teleconference call, a consensus was reached as to a date on which everyone was available – Monday, May 16, 2022. I confirmed this date as Hearing Day 4.

I would like to take this opportunity to thank the Parties and Participants for their cooperation and patience during the call and their diligence in assisting the TLAB in securing the date for Hearing Day 4. Although Mr. Gary Roxborough, the Appellant, was not able to attend the Teleconference call, his neighbour Ms. English confirmed that he would be available to attend on that day. I was also advised by the Parties that Dr. Gail Moore, also not in attendance during the call, would be advised as to the date secured for Hearing Day 4.

DECISION AND ORDER

Therefore, TLAB staff are directed to issue a Notice of Hearing for Hearing Day 4 in this appeal matter for Monday, May 16, 2022.

Exchange dates outlined in the Notice of Hearing dated September 3, 2021, and previously issued by the TLAB for this matter will remain unchanged.

The TLAB may be spoken to if issues arise.

X



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