

# INTERIM DECISION AND ORDER

**Decision Issue Date**      Monday, February 14, 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): SANJAY KONESWARAN

Applicant: STIJLTREE

Property Address/Description: 21 SPALL CRT

Committee of Adjustment Case File Number: 21 122890 ESC 25 MV (A0102/21SC)

TLAB Case File Number: 21 164057 S45 25 TLAB

**Hearing date:**      Monday, January 31, 2022

**DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANT

Owner/Appellant	SANJAY KONESWARAN
Appellant's Legal Rep.	DEEP SAHOTA
Applicant	STIJLTREE
Primary Owner	PAVANANTHAN KUMARASAMY
Participant	KELLY MOHAMMED
Participant	BERNARDO PELAYO
Participant	MAZHAR TAQI RIZVI SYED
Participant's Legal Rep.	MUHAMMAD SYED

## **INTRODUCTION AND BACKGROUND**

Sanjay Koneswaran and Pavananthan Kumarasamy are the owners of 21 Spall Court, located in Municipal Ward 25 (Scarborough-Rouge Park) of the City of Toronto. They applied to the Committee of Adjustment (COA) for the approval of a variance that would enable them to “build a new rear elevated deck with cover, remove the existing structure, and retain the existing cover”.

The COA heard the application on May 12, 2021, and refused the Application. The Applicants then appealed the decision to the Toronto Local Appeal Body (TLAB), which issued a Notice of Hearing on October 26, 2021, listing various deadlines for the filing of documents, as well as setting a Hearing date of January 31, 2022. It is important to note that the Notice of Hearing asked for Witness Statements to be filed by December 29, 2021 by all Parties and Participants, including the Applicants.

Participants Messrs Kelly Mohammed, Bernardo Pelayo and Muhammed Syed submitted Witness Statements to the TLAB on, or before December 29, 2021- however, no Witness Statement was submitted by the Applicant.

At the Hearing held on January 31, 2022, the Applicant was represented by Mr. Deep Sahota, while Messrs. Kelly Mohammed, and Bernard Pelayo represented themselves. Mr. Muhammed Syed said that he represented another Participant involved with this Appeal, Mr. Mazhar Taqi Rizvi Syed.

I brought up the issue of the Applicant’s not submitting a Witness Statement at the very beginning of the Hearing. Mr. Sahota acknowledged that they had not submitted a Witness Statement, but did not respond directly to my question about why they had not submitted a Statement. He asked for a “break” that he could get a “Witness Statement to the TLAB in 20 minutes”; I advised him that it would “take much longer to get a decent Witness Statement to the TLAB”, to which he responded that since “ we have seven hours today, a longer break will help me get the Witness Statement in”. I told him that holding a Hearing on the same day on which the Witness Statement had been submitted would be unfair to the Opposition because they would have had a reasonable opportunity to review his Statement. I ruled that in the interests of procedural fairness, we could not proceed to a full Hearing immediately, and informed Mr. Sahota that “in the interests of fairness, it is important that the Opposition be given an opportunity to review the Statement, so that they can come prepared to respond to the same.”

I then asked Mr. Sahota if he wished to be an “Expert Witness”, to which he replied in the affirmative. I reminded him to complete the requisite paperwork to be recognized as an Expert Witness, and advised him that I would ask questions at the beginning of the next Hearing to establish his credentials, and understanding of an Expert Witness’ Duty, before qualifying him as an Expert. I also said that there was no guarantee that he would be recognized as an Expert, notwithstanding his completing the requisite paperwork.

I drew Mr. Sahota's attention to the fact that the drawings submitted to the TLAB did not have dates, or the address of the Site. Mr. Sahota explained to me that the individual who had prepared the drawings, Mr. Gagan Hajatri was no longer involved in the project, and that he had access to "engineering drawings, which were more accurate". He pointed me to where the address of the Site could be found, and informed me that the date could be found on the "bottom right of the Sheet". I reminded him of the need to submit updated drawings, with legible dates and legends where appropriate, because the TLAB tied approvals (where they were granted) to submitted Plans and Elevations.

All the members of the Opposition voiced their disappointment clearly at the Applicants' lack of submissions, and the possibility of an adjournment to ensure that the necessary paperwork was in place. I told the Participants that while I understood, and empathized with their frustration, the TLAB had a duty to be fair to all Parties, which included providing an opportunity to the Applicants to present their case, to the best of their abilities.

I said that the Hearing had to be adjourned to permit the filing of necessary documents, and that the Applicants had until February 28, 2022 to file their Witness Statement, documentation to be recognized as an Expert Witness, and updated drawings where appropriate. I thanked and commended the Participants for adhering to the timelines, and filing Witness Statements in a timely fashion, and advised them to update their Statements by establishing the link between their evidence, and one, or more of the four tests under Section 45.1 of the Planning Act.

## **MATTERS IN ISSUE**

The purpose of this Decision is to set a deadline for the submission of documents by the Applicant, and state what needs to be done, and by whom, at the Hearing to be held to complete this Proceeding. The second question is to inform the Party and Participants of the date on which the Hearing will be completed.

## **JURISDICTION**

The TLAB relies on the Rules of Process and Procedure ("the Rules") to make decisions about administrative issues, including scheduling of Hearings.

## **ANALYSIS, FINDINGS, REASONS**

It is important to commend the Participants for their adherence to submitting written Witness Statements and photographs to the TLAB in a timely fashion. As advised at the Hearing held on January 31, 2022, it is important that the Participants update their Statements to demonstrate the nexus between their concerns, and one, or more of the four tests under Section 45.1 of the Planning Act. The four tests in question are listed

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clearly in the COA decision respecting 21 Spall Court, which would have been made available to everybody who participated in the COA hearing.

It is not clear why the Applicants did not submit a Witness Statement- the TLAB's Rules state in no uncertain terms that Witness Statements have to be submitted by the deadline listed in the Notice of Hearing. The TLAB operates on the principle that there can be "no trial by ambush", or surprises may not be sprung on any Party at the last minute by any other Party, enabling everybody to come prepared to the Hearing, and address issues brought up by the other Parties. It is important that the Parties and Participants in any Proceeding eschew what may be politely described as an "easy going attitude", follow the Rules, and fulfill submission requirements by the deadlines.

The Applicants are given time until the **end of day on February 28, 2022**, to submit a Witness Statement to the TLAB, which explains how their proposal satisfies the four tests under Section 45.1 of the Planning Act. It is expected that they identify any specific policies from the Official Plan, with a write-up of how the proposal satisfies the specific Policies identified. It is important they provide an explanation of how their proposal is consistent with the intent, and purpose of the Zoning- By-Law, and fulfills the tests of minor, and appropriate development. The updated drawings referred to at the earlier Hearing held on January 31, 2022, may be included as a separate Attachment of the same submission- I reiterate that the legend, dates and other details be legible to the naked eye.

If the Applicants need their Witness to be recognized as an Expert Witness, it is important that they complete the requisite paperwork, and submit it before February 28, 2022 to the TLAB. As stated at the earlier Hearing, questions may be asked of the Witness regarding their qualifications, and understanding of an Expert's Duty, before being recognized as an Expert Witness in the area of land-use planning.

However, the Applicants need to recognize that the TLAB Rules prevent an Expert Witness from simultaneously being an Agent at the same Hearing- in practical terms, what this means is that the Applicant's Agent cannot ask questions of the Participants, by virtue of being recognized as an Expert Witness. Under ordinary circumstances, , an Agent can ask questions, or cross-examine other Parties, or Participants, under the TLAB's Rules.

Lastly, at the Hearing held on January 31, 2022, I informed the Applicants that I could not locate the address of the Site, or the date on which the drawings had been done, on the Elevations and Plans submitted to the TLAB. As stated earlier, the address of the Site was pointed out to me ( it was not visible to the naked eye, and required a magnification of the diagram), and I was assured that the date was on the bottom right corner of the drawing. When I magnified the drawings after the Hearing, to locate the date on which the drawings were prepared, I found that the date on which the drawings were prepared, could not be located.

The Party and Participants need to come prepared to make presentations (where appropriate) to the TLAB by way of Webex, including sharing their screens, on the day of the Hearing.

The next Hearing to complete this Proceeding will be held by way of **a Webex, and commence at 9:30 AM on March 29, 2022.**

## **INTERIM DECISION AND ORDER**

1. The Applicants are asked to submit a Witness Statement, updated Plans and Elevations relevant to the proposal, and all documentation and photographs they wish to rely on to the TLAB, by the end of day on February 28, 2022. The Applicants are also directed to simultaneously circulate the documentation and diagrams to the Participants present at the Hearing held on January 31, 2022.
2. The Applicants may submit paperwork for their Agent to be recognized as an Expert Witness at the Hearing, on the clear understanding that the roles of an Agent, and Expert Witness are mutually exclusive.
3. The Participants, all of whom are in Opposition, need to update their Witness Statements, to the TLAB, by the end of the day on February 28, 2022, to indicate the relationship between their submitted evidence, and one, or more of the four tests under Section 45.1. The Participants are directed to simultaneously circulate their Statements and Photographs to the Applicants.
4. The next Hearing, to complete this Proceeding, will take commence **at 9:30 AM on March 29, 2022**, and will be held by way of **a videoconference on Webex.**

So orders the Toronto Local Appeal Body

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body