

# MOTION DECISION AND ORDER

**Decision Issue Date**      Wednesday, April 06, 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): Lawrence Lyon Chad and Naomi Himel

Applicant: Goldberg Group

Property Address/Description: 257 Dunvegan Road

Committee of Adjustment Case File Number: 21 183833 STE 12 MV (A0918/21TEY)

TLAB Case File Number: 21 240850 S45 12 TLAB

**Hearing date:**      Wednesday, March 30, 2022

**DECISION DELIVERED BY** D. Lombardi, TLAB Chair

## REGISTERED PARTIES AND PARTICIPANT

Appellant	Lawrence Lyon Chad
Appellant	Naomi Himel
Applicant	Goldberg Group
Party	Jason DeZwirek
Party's Legal Rep.	Jason Park

## INTRODUCTION AND BACKGROUND

This matter arises by way of a Motion requesting a Written Hearing.

On November 3, 2021, the Toronto and East York Panel of the Committee of Adjustment (COA) issued a decision approving an Application for variances to construct a new three-storey detached dwelling with: a rear ground floor terrace and in the front

yard, a car lift located on the driveway, leading to the underground parking in the basement floor level of the dwelling with two parking spaces (Application) at 257 Dunvegan Road (subject property).

The Applicant proposes to demolish the existing single detached dwelling on the subject property and replace it with a new three-storey detached dwelling. The subject property is located in the Forest Hill neighbourhood of Toronto.

Lawrence Chad (Chad), a resident and the owner of the property located at 255 Dunvegan Rd., which is immediately east of the subject property, and Naomi Himel (Himel), a resident and owner of the property at 259 Dunvegan Rd., which is immediately west of the subject property (collectively the Appellants), appealed the COA's decision to the Toronto Local Appeal Body (TLAB).

The TLAB issued a *Notice of Hearing* setting a date of April 28, 2022, to hear the appeal.

In the interim, Jason DeZwirek (Applicant and the Moving Party) engaged in separate negotiations and settlement discussions with the Appellants. Mr. DeZwirek, through his legal counsel (Jason Park, Devine Park LLP), advises the TLAB that those discussions have demonstrated the Appellants' willingness to have further discussions with the intention of attempting to achieve a full settlement of the issues in dispute in the Appeals.

Such a settlement, if achieved, would require the Applicant to revise the development plans and the preparation of a revised list of proposed variances.

On February 7, 2022, the Applicant's solicitor wrote to inform the TLAB of their client's request for an adjournment for a minimum of six months, on the consent of the Appellants. In response, TLAB staff advised the Applicant to resend the request once the election of the status period in the matter had ended.

On February 28, 2022, following that election period due date, the Applicant's solicitor resubmitted the request for an adjournment and notified all the appropriate Parties and Participants.

To continue their collaborative exchange, and in the hopes of settling, the Parties are requesting an adjournment of the scheduled Hearing on consent, for a minimum of six (6) months.

## **MATTERS IN ISSUE**

The Moving Party is seeking an Order of the Tribunal for an adjournment of the Hearing scheduled on April 28, 2022, for a minimum of six (6) months to allow the

Parties to continue with settlement negotiations and hopefully reach a full settlement in this appeal matter.

Additionally, the Applicant requests an extension of the due date timelines for the various filings established in the Notice of Hearing (Form 1) issued by the TLAB on January 26, 2022, as a result of these ongoing discussions.

## **JURISDICTION**

Rules 4.4, 4.5, 4.6, 17.2, 23.3 and 23.4 of the TLAB's Rules of Practice and Procedure (Rules) govern, *inter alia*, the extension of timelines and consent adjournments on Motions set out in the Rules. Furthermore, Rules 16.1 to 16.13 govern Disclosure and the timelines for filing documents, including Witness Statements, Responses and Replies.

## **EVIDENCE**

In support of the Motion, the Applicant submitted a *Notice of Motion* (Form 7) dated March 7, 2022, and an Appendix to the *Notice of Motion* which sets out the facts upon which the Moving Party relies. The *Notice of Motion* is accompanied by an Affidavit sworn by Morgan Dundas, the Applicant's expert land use planner, also dated March 7, 2022 (Form 10 and Appendix), which refers to the settlement discussions and consent adjournment.

Mr. Chad, an Appellant, filed a *Notice of Response to Motion* (Form 8) and an Affidavit (Form 10) agreeing to the adjournment and the request for an extension of the timelines for filing submissions.

The Moving Party's Motion requests the following:

1. An Order of the Tribunal, pursuant to Rules 4.4, 4.5, 4.6, 17.2, 23.3 and 23.4 of the TLAB's Rules of Practice and Procedure (the "Rules"), declaring the following:

*a. an adjournment of the hearing scheduled on April 28, 2022, for a minimum of six months; and*

*b. an extension for the timelines for the various filings to allow further discussions with the appellants, Lawrence Chad ("Chad") and Naomi Himel ("Himel"), in efforts to reach a full settlement (collectively, the "Appellants").*

## ANALYSIS, FINDINGS, REASONS

The Motion before me seeks to adjourn the Hearing in this appeal matter scheduled for April 28, 2022, for a minimum of six months to allow the Parties to continue their ongoing and collaborative discussions with the hope of achieving a full settlement. Mr. Dundas, in his Affidavit, confirms that those discussions are going well, and that the Applicant and the Appellants are discussing possible revisions to the development proposal, in addition to revised variances, which could result in a full settlement in the Appeals.

Furthermore, he acknowledges that if a settlement is reached, his firm (the Goldberg Group), anticipates filing revised plans on behalf of the Applicant. He submits, therefore, that additional time is required to continue those discussions with the Appellants, prepare the revised set of drawings, review them with the Appellants, and possibly obtain a new Preliminary Project Review from the City's Building Division.

Parties Chad and Himel consented to the adjournment of the scheduled Hearing and an extension of the filing due dates to accommodate the process above recited.

There were no other responses to the *Notice of Motion* filed with the TLAB.

Given the evidence before me, I am prepared to grant the adjournment of the scheduled Hearing for a period of at minimum six months from the date of the issuance of this Decision and Order. I also concur with the Moving Party and grant an extension of the timelines for filing in consideration of the ongoing discussions between the Applicant and Applicants with the understanding that the Parties hope to arrive at a settlement in this matter.

In granting the relief requested, I find that an adjournment and an extension of submission timelines will not result in undue prejudice in this matter as there are no parties or participants other than the Applicant and Appellants.

Finally, I also acknowledge that Mr. DeZwirek and the Appellants may approach the TLAB to request and pursue TLAB-led mediation if private settlement discussions stall and the Tribunal's assistance is required.

## DECISION AND ORDER

The Moving party's requested relief in the *Notice of Motion* dated March 7, 2022, is granted.

The Hearing in this matter scheduled for April 28, 2022, is adjourned on consent.

The Applicant and Appellants will keep the TLAB updated as to the ongoing settlement discussions and will advise the Tribunal accordingly if a settlement is reached.

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If a settlement is reached, the TLAB will schedule an expedited Settlement Hearing and issue a new Notice of Settlement Hearing to hear the matter with revised filing dates.

In the event that a settlement is not reached, the matter will go forward as a contested hearing matter and the Member directs that TLAB staff canvas the Parties and Participants for their availability to attend a new Hearing six (6) months after the issuance of this Order.

TLAB staff will be directed to re-issue the Notice of Hearing for this case 21 240850 S45 12 TLAB) with revised dates for filing of Document Disclosure, Exchange of Witness Statements, Exchange of Expert Witness Statements, Participant Statements, Responses to Witness Statements and Replies to Witness Statements set out in the Notice of Hearing on this matter.

If difficulties arise in the implementation of this Decision and Order, the TLAB may be spoken to.

X 

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