

# MOTION DECISION AND ORDER

**Decision Issue Date** Monday, April 04, 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): JOHN GEDEON

Applicant: RICHARD WENGLER ARCHITECT INC.

Property Address/Description: 96 CHELTENAM AVENUE

Committee of Adjustment Case File Number: 21 217503 NNY 15 MV (A0674/21NY)

TLAB Case File Number: 21 243396 S45 15 TLAB

**Hearing date:** Friday, April 01, 2022

**DECISION DELIVERED BY S. GOPIKRISHNA**

## REGISTERED PARTIES AND PARTICIPANT

Appellant	John Gedeon
Appellant's Legal Rep.	David Bronskill
Applicant	Richard Wengler Architect Inc.

## INTRODUCTION AND BACKGROUND

John Gedeon and Tina Gedeon are the owners of 96 Cheltenham Avenue (the "Site"), located in Ward 15 ( Don Valley West ) of the City of Toronto. They applied to the Committee of Adjustment (COA) for the approval of variances to enable them to construct a new house at the Site. The Committee of Adjustment (COA) heard the Application on November 18, 2021, and refused it in its entirety. The Applicants subsequently appealed the COA's decision to the Toronto Local Appeal Body (the "TLAB") on 30 November, 2021, which scheduled a Hearing, to be held by way of a videoconference on May 12, 2022.

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On February 2, 2022, the TLAB issued a Notice of Hearing which listed the following deadlines:

- Applicant Disclosure as per Rule 11 (Form 3) DUE no later than February 22, 2022
- Notice of Intention to be a Party as per Rule 12 (Form 4) DUE no later than March 04, 2022, or Notice of Intention to be a Participant as per Rule 13 (Form 4) DUE no later than March 04, 2022
- Document Disclosure as per Rule 16 DUE no later than April 04, 2022
- Witness Statement as per Rule 16.4 (Form 12) DUE no later than April 04, 2022
- Response to Witness Statement as per Rule 16.5 (Form 19) DUE no later than April 19, 2022
- Reply to Response to Witness Statement as per Rule 16.5 (Form 20) DUE no later than April 28, 2022
- Participant Statement as per Rule 16.5 (Form 13) DUE no later than April 04, 2022
- Expert Witness Statement as per Rule 16.6 (Form 14) DUE no later than April 04, 2022
- Response to Expert Witness Statement as per Rule 16.9 (Form 21) DUE no later than April 19, 2022
- Reply to Response to Expert Witness Statement as per Rule 16.10 (Form 22) DUE no later than April 28, 2022
- Notice of Motion as per Rule 17 (Form 7) DUE no later than April 27, 2022

It is important to note that as of March 4, 2022, no other individual(s) elected to be a Party or Participant with respect to this Appeal.

On March 17, 2022, Zachary Fleischer, a lawyer with Goodmans LLP submitted a Motion on behalf of the Appellants to the TLAB, requesting that the Hearing scheduled for May 12, 2022, be converted to a "Hearing in Writing". The Motion Material relies on Rule 24.6 of the TLAB's "Rules of Practices and Procedures" (the Rules) in support of the request, as recited below:

- *There are no other Parties to this Appeal other than the Applicant/Appellant, the Motion asserts that the "most expeditious and cost-effective manner of determining this proceeding on its merits would be to convert the Electronic Hearing to a Written Hearing to be heard by way of Affidavit and Written Submissions. Rule 24.6 of the Rules states that the TLAB may consider any relevant factors in deciding to hold a Written Hearing, including:*
  - a) the convenience to the Parties and the TLAB;*
  - b) the likelihood of the process being less costly, faster and more efficient;*
  - c) whether it is a fair and accessible process for the Parties;*

*d) the desirability or necessity of public participation in or public access to the TLAB's process;*

*e) whether the evidence or legal issues are suitable for a Written Hearing;*

*f) whether credibility may be an issue or the extent to which facts are in dispute;*

*g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.*

The Motion emphasizes that a Written Hearing is “less costly, faster, and more efficient”, in a number of places.

The Motion also asserts that there is benefit to the TLAB with a Written Hearing, because it “will release a hearing day into the TLAB calendar, expending less of the TLAB's valuable resources and hearing time”. It points out that the deadline for electing to be a Party/Participant was March 4, 2022, and that the Appellant was the sole identified Party as of that date. The Motion concludes that “there are no concerns with respect to the desirability or necessity of public participation or access, and no prejudice is caused” with a Written Hearing, since it involves a single Party. Lastly, the Motion asserts that “the land use planning evidence in this proceeding is suitable for a Written Hearing and credibility is not an issue.”

The assertions stated above are followed by a discussion of Rule 2.12 of the Rules, which “permits the TLAB to grant any relief as it considers appropriate to enable it to effectively and completely adjudicate the matters before it in a just, expeditious, and cost-effective manner”. According to the Appellants, such relief is best manifested in the “conversion of the proceeding to a Written Hearing” “through affidavit evidence from our client's land use planner”.

The Appellants ask that Rules 24.7 - 24.10 may be dispensed with “respect to responding and reply submissions would allow for the most expeditious determination of this proceeding on its merits as it would permit the TLAB to make a decision prior to the expiry of the time for any reply submissions”.

The Motion was accompanied by an Affidavit, dated March 17, 2022, sworn and signed by Mr. Christian Jattan, a Registered Professional Planner, employed as a Senior Planner by Weston Planning. The Affidavit provides details about who reviewed the planning merits of the Application at Weston Co. before they accepted the retainer, and confirms that no individual elected for Party or Participant Status, as of March 4, 2022, “the last day to complete the Forms expressing one's Intention to be a Party or a Participant”. The remainder of the Affidavit is not repeated because it repeats arguments made in the Motion.

## **MATTERS IN ISSUE**

The question to be answered by way of this Motion Decision is whether to convert the Hearing respecting 96 Cheltenham Avenue (scheduled to be held by way of Videoconference on May 12, 2022) into a Written Hearing.

## **JURISDICTION**

The TLAB relies on its Rules of Practices and Procedures (the “Rules”) to make decisions about administrative issues, including the format of the Hearing, given the circumstances of a given Appeal.

## **ANALYSIS, FINDINGS, REASONS**

The purpose of the Motion (to reiterate what was stated in the “Introduction and Background” Section of this Decision) is to request that the Hearing for the Appeal respecting 96 Cheltenham Avenue, (scheduled to be held by way of a videoconference on May 12, 2022) into a Written Hearing, where the evidence to be “heard” consists of an Affidavit submitted by a Planner, with details of how the requested variances pass all the relevant tests, under Sections 3 and 45.1 of the Planning Act.

The Appellants correctly point out that as of March 4, 2022, the last date to elect for Party or Participant status, no individual (other than the Appellants) completed a Notice of Intent, which would allow the individual in question to elect for Party or Participant status. The Motion material then describes the advantages that could potentially accrue to Appellants, both procedurally and financially, if the Motion were granted. I am in agreement with the Appellants’ submissions about how they would benefit if their Motion were approved.

However, I have the following procedural concern if their Motion were granted:

According to the Notice of Hearing, Individuals can file a Motion with respect to this Appeal until April 27, 2022. It may be noted that an individual, or individuals, who have not hitherto elected for Party, or Participant status by the requisite deadline (i.e. March 4, 2022 in this case), can still bring forward a Motion by the appropriate date stated in the Notice of Hearing (April 7, 2022), to request for Party or Participant status.

Converting the Motion to a Written Hearing on the assumption that there will continue to be one, and only one Party involved, precludes scenarios where individuals may express interest in participation, through bringing forward such a Motion. As of April 1, 2022, the day this Decision is being written, it is difficult to divine if anybody will express interest in participating in the Hearing respecting this Appeal, on or before April 27, 2022, even if they did not complete a Notice of Intent by the appropriate deadline.

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With respect to the processing of the Appeal itself, there is a bigger concern with a Written Hearing.

The main purpose of a *viva voce* Examination is that it enables Adjudicators to hear evidence from the Witnesses, ask questions of clarification, and come away with a comprehensive picture of the proposal, enabling them to make an informed Decision- in other words, the Hearing and *viva voce* examination are the very soul of the decision making process. For an Adjudicator to approve a Motion for a Written Hearing, it would be important for the Appellants to establish that the submissions made by a Party are such that they can simultaneously satisfy expectations about comprehensiveness and comprehensibility, eliminating the need for clarifications to be obtained by way of questions asked of Witnesses.

In the absence of such a comprehensive and comprehensible submission, I find that reading the Applicants' Witness Statement is merely the commencement of the information gathering process, as opposed to its cessation. While Written Hearings may be more "convenient" from the Moving Party's perspective, the asserted convenience comes at the cost of the comprehensiveness, and the comprehensibility of evidence, obtained through a conventional *viva voce* examination. I am concerned that granting the Motion would result in my deprived of a valuable opportunity to ask questions of the Witness, and seek clarifications on aspects of the proposal, that are not clear on the basis of the Witness Statement.

The concerns stated in the above discussion, regarding the pros and cons of a Written Hearing, are augmented by the paucity of information regarding the merits of this Application, at the time when this Decision is being issued.

The file respecting this Appeal at the TLAB website includes Reports issued by various City Departments, including the Transportation, and Planning Departments- the former, dated November 10, 2021, recommends that a variance respecting access to the house from Cheltenham Avenue should be refused, while the latter, also dated November 10, 2021, proffers an opinion that does not object to the depth of the house, but offers no comment, nor information regarding the other variances. While I am fully cognizant of the Notice of Hearing giving the Appellants time until April 4, 2022, to provide their Witness Statement, the fact of the matter is that at the very moment when I have to make a decision about the adequacy of information to proceed by way of a Written Hearing, the information before me about this Appeal is insufficient to support a Written Motion- the Transportation Department's recommendation about refusing one of the variances, and the absolute lack of information about many of the variances, results in more questions being asked than have been answered.

On the basis of this analysis, I find that it would be prudent to refuse the Motion, and order that evidence be heard by means of a *viva voce* examination. While I appreciate the thoughtfulness of the Appellants by helping me understand how the TLAB may benefit if their Motion was granted, I find that from the TLAB's perspective, more is lost than gained, if the Motion were granted.

While this may not be the intention of the Appellants, the recommended “short cut” runs the real risk of the Hearing process being “short circuited”- there are more proven disadvantages, than advantages, striking at the robustness of the information gathering process to arrive at a Decision.

The Motion is consequently refused, and the Hearing will proceed by way of a videoconference, scheduled to commence at **9:30 AM on May 12, 2022**, as indicated in the Notice of Hearing.

The consequence of the above finding is that none of the other deadlines stated in the Notice of Hearing can be disturbed, nor discarded- consequently, I also find that Rules 24.7 - 24.10 continue to be applicable, and may be adhered to for the remainder of this Proceeding. No relief is provided from Sections 24.7- 24.10 of the TLAB’s Rules.

## **MOTION DECISION AND ORDER**

1. The Motion put forward by the Appellants, requesting for the conversion of the Hearing respecting 96 Cheltenham Avenue, scheduled to be held by way of a Videoconference on May 12, 2022, into a Written Hearing is refused.
2. The Hearing respecting 96 Cheltenham Avenue, will proceed by way of a Videoconference on May 12, 2022, scheduled to begin at 9:30 AM.
3. The deadlines listed in the Notice of Hearing, dated February 2, 2022, have to be adhered to, as appropriate, for the completion of this Proceeding. No relief is provided from Sections 24.7-24.10 of the TLAB’s Rules, for the purposes of hearing this Appeal.

So orders the Toronto Local Appeal Body



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body