

INTERIM DECISION AND ORDER

Decision Issue Date Monday, May 16, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Nanu Alexandru Ion Dragos

Applicant(s): Peter Vozikas

Property Address/Description: 6 Benstrow Ave

Committee of Adjustment File

Number(s): 20 170209 WET 01 MV

TLAB Case File Number(s): 21 132798 S45 01 TLAB

Last Submission Date:

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY : S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

APPLICANT PETER VOZIKAS

OWNER SANDEEP BHARDWAJ

NEENA SHARMA

APPELLANT NANU ALEXANDRU ION DRAGOS

INTRODUCTION AND BACKGROUND

The purpose of this Interim Decision is to provide instructions to the Parties involved with the Appeal respecting 6 Benstrow Avenue. By way of a brief overview of the trajectory of this case, the Applicants, Mr. Sandeep Bhardwaj and Ms. Neena Sharma, applied for variances to make various changes to their house, including construction of a second storey addition, a rear deck and a two storey south side addition, all of which were approved by the Committee of Adjustment (COA) on March

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9, 2021. The decision made by the COA was appealed by the Appellant, Mr. Nanu to the Toronto Local Appeal Body (TLAB) - the date on which the Appeal was submitted to the TLAB was March 26, 2021 or April 4, 2021, depending on the receipt of the document, since the date on Appeal form is not visible. However, the date is of no significance at this stage since the Appeal met the TLAB's deadline for an Appeal.

In August 2021, the Appellant brought forward a Motion to the TLAB asking for an adjournment of the Hearing originally scheduled for September 2021, in addition to other components that required various "disclosures" from the City, regarding the variances that were previously ruled on by the COA, and presently before the TLAB. Relief was provided to the Appellant in the form of an adjournment of the Hearing scheduled for September 2021, while the rest of the Motion was refused.

On November 18, 2021, I met with the Parties by way of a videoconference completed through Webex, where the Applicants were represented by Mr. Peter Vozikas, an Architectural Designer, while Mr. Nanu, the Appellant, represented himself. I explained the basic procedure of a TLAB Hearing and what was expected of the Parties, including the important fact that the onus for proving that the variances satisfied the four tests under Section 45.1 of the Planning Act, lay with the Applicants- I emphasized that the Applicants were required to present clear and cogent evidence about how their proposal satisfied all four tests under Section 45(1) of the Planning Act. By way of procedure, I informed the Parties that the Applicants could be expected to present their evidence first, followed by the Appellants, after which, the Applicants would have the right to provide a "Reply" to issues that had been brought up by the Appellants, but which were not addressed in their Evidence-in-Chief, earlier in the Hearing. It was also important for the Applicants, and Appellants to provide written Witness Statements to the TLAB, in advance of a Hearing, by deadlines provided by the TLAB, so that both Parties could understand the position of the other side, and come prepared to address each other's issues by way of evidence at the Hearing.

I approved Mr. Vozikas' request for time till January 2022, to submit the Witness Statement. However, no documents were received by the TLAB in January 2022- when this situation did not change by April 2022, I instructed the TLAB staff to check with the Parties to remind them about the submission of documents, and identify dates when they would be available for a Hearing. In response to the TLAB's reaching out to the Parties, Mr. Vozikas sent out a short message dated April 14, 2022, that he would "submit the report later this month", followed by what I understood to be a Witness Statement to the TLAB on April 17, 2022.

On the same day (April 17, 2022), a response was received from the Appellant, Mr. Nanu, where he stated that he was "maintaining his Appeal", and would submit a Witness Statement, "when required". He pointed out that no response had been received from the Applicants in response to the instructions issued by me at the Videoconference held on November 18, 2022. He also drew attention to the Applicants not being in attendance at the Videoconference held on November 18, 2022, and that there were no other Parties nor Participants who had expressed an interest in this Appeal. He asserted that he was in substantial compliance with the "Rules" (

presumably the TLAB's Rules of Practice and Procedure), with special reference to Rule 2.10. He then asked the Tribunal to recognize the "*de-facto abandonment of all opposition to my Appeal*", and "*rule in my favour*".

ANALYSIS, FINDINGS, REASONS

The two questions that need to be answered by way of this Interim Decision are as follows:

- 1) Does the TLAB recognize a "de-facto abandonment of opposition to the Appeal" and rule in favour of the Appellant?
- 2) Instructions for the Parties with respect to Witness Statements

With respect to Question (1) i.e. the Appellant's email, dated April 17, 2022, asking that the lack of submissions from the Applicant, be construed as "de-facto abandonment of opposition to the Appeal", I cannot understand the basis, or meaning of this Statement.

Given that the Notice of Hearing was issued by the TLAB on May 9, 2021, it is important to refer to the Rules that were adopted on December 2, 2020- I have referred to these Rules to recite Rule 2.10, with the appropriate heading, as appears below:

Matters Not Dealt with by the Rules

2.10 Any amendment to these Rules comes into force upon its publication on the TLAB's Website, unless the TLAB directs otherwise.

There is no demonstrable nexus between the above Rule, and the Appellant's stated intention of asking the TLAB to construe the Applicant's lack of adherence to the deadlines, and non-appearance at the Hearing held on November 18, 2021, as "de-facto abandonment of opposition to the Appeal". In addition to noting that the Applicants were "present" at the Hearing held on November 18, 2021, by virtue of Mr. Vozikas being in attendance, it is important for me to emphasize that the Appellant should have brought filed a Notice of Motion if they wanted to dismiss the Appeal, without a Hearing. On the basis of a slew of submissions, comprising an informal email, with little more than an assertion of the Applicant's alleged non-adherence to the Rules, and an unproven nexus to the TLAB's Rules, it is impossible to grant the Appellant's request. As such, there is no reference in the email about the equivalence between non-submission of documents to a "de-facto abandonment of opposition to the email", nor is there any indication of the TLAB's having the necessary jurisdiction to rule in the favour of one Party, without a formal Motion brought forward by the Party in consideration.

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I find that no weight need be accorded to the Appellant's email, dated April 17, 2022, asking for a recognition of the "*de-facto abandonment of opposition to the Appeal*"- consequently, this Appeal will proceed to a Hearing.

The TLAB canvassed the Parties, and has fixed **June 29, 2022**, to hear the Appeal by virtue of an oral Hearing. I acknowledge that the Applicant has submitted a Witness Statement, which was received by the TLAB on April 20, 2022, and am aware that the Appellant has stated that they will submit a Witness Statement "when required". After reading the Applicant's Witness Statement, I must hasten to repeat the same points that were stated at the Hearing held on November 18, 2021:

- The onus lies with the Applicants to demonstrate that their proposal is consistent with Section 3 of the Planning Act, and satisfies the four tests under Section 45.1 of the Planning Act.
- The Witness Statement, and the evidence to be given by the Applicant needs to clearly demonstrate that the proposal satisfies the four tests through specific reference to Policies that appear in the Official Plan (OP), and how the proposal satisfies those Policies- the policies need to be identified, and recited followed by an explanation of how the proposal satisfies these Policies. Secondly, the Witness Statement has to refer to the specific performance standards in the context of the By-Law, and demonstrate how the variances fulfill the intent and purpose of the By-Law, with respect to these performance standards. At the very least, there needs to be an outline of how the proposal satisfies the tests of appropriate development, and minor.

Mere assertion of the proposal's ability to satisfy the four tests does not construe adequate evidence in support of the variances that need to be approved.

- The Applicants need be reminded that a mere rebuttal of the issues brought up by the Opposition, does not, in and of itself, provide adequate evidence for the variances to be approved.

To respond to the concerns stated above, the Applicant may append additional submissions to the Existing Witness Statement with additional submissions, , if they deem it appropriate.

Lastly, I discourage the Applicants, and Appellants from following the template/format of a TLAB decision for presenting the outline of their evidence. The Witness Statements of the Parties are different from a Decision issued by the TLAB, because they follow a different structure- the format that they may be expected to follow is best understood by perusing

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Witness Statements submitted for other proceedings, which are available on the TLAB website.

I reiterate that a Hearing Notice has been issued by the TLAB stating that this Appeal will be heard by way of a Webex platform based videoconference, at 9:30 AM on June 29, 2022. Consequently, I provide the following deadlines to be adhered to by the Parties:

- The deadline for exchange of Witness Statements is June 10, 2022 (Friday). The Applicants may submit any additions to their Witness Statement, which respond to the stated concerns in this Decision, while the Appellants need to submit a Statement that discusses their opposition to the Appeal.
- The deadline for exchange of Responses (additional information to address issues brought up by the other Party in their Witness Statement) for both Parties, is June 17, 2022 (Friday).
- The deadline for exchange of Reply statements (additional information to address issues brought up by the other side in their Responses) is June 24, 2022 (Friday).

It is important to note that while Witness Statements are mandatory, Response and Reply statements don't have to be necessarily submitted by the Parties, unless the circumstances absolutely warrant such submissions. The Parties have to be judicious in their filing Responses, and Replies by asking themselves if there is a crying need to send in such submissions - a mere repetition of objections against the submissions of the other Parties, and reiterating the reasons in support of one's own position, by way of Response, or Reply is not encouraged.

The Parties need to submit the Witness Statements, Responses and Replies, by the end of the day (4:30 PM) on the dates specified in the "Interim Decision and Order" Section to the TLAB at TLAB@toronto.ca, as well as serve them on each other electronically.

INTERIM DECISION AND ORDER

1. The Appellant's request asking for a recognition of the "*de-facto abandonment of opposition to the Appeal*" is refused. The Appeal proceeds to a Hearing, to be conducted by way of a Webex based Videoconference, that is scheduled to start at 9:30 AM on June 29, 2022.
2. The following deadlines may be adhered to by the Parties, for the purposes of exchanging Witness Statements:
 - The deadline for exchange of Witness Statements is June 10, 2022 (Friday).

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- The deadline for exchange of Responses (additional information to address issues brought up by the other side in their Witness Statement) for both Parties, is June 17, 2022 (Friday).
- The deadline for exchanging Reply (additional information to address issues brought up by the other side in their Responses) is June 24, 2022 (Friday).

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body