

MOTION DECISION AND ORDER

Decision Issue Date Wednesday, May 11, 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): YIFAN CHEN

Applicant(s): ALLAN STONE ARCHITECT

Property Address/Description: 323 OAKWOOD AVE

Committee of Adjustment File

Number(s): 21 126607 STE 09 MV (A0375/21TEY)

TLAB Case File Number(s): 21 195983 S45 09 TLAB

Hearing date: January 04, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant YIFAN CHEN

Applicant ALLAN STONE ARCHITECT

Party DAVID STONE

INTRODUCTION AND BACKGROUND

David Stone and Erin Bell are the owners of 323 Oakwood Ave., located in Ward 09 (Davenport) of the City of Toronto. They decided to convert the existing two-storey mixed building into a single family townhouse dwelling by constructing a three-storey rear addition, and a rear second storey deck, by building an extension at the back of the

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house. In the process of getting ready to build the extension, they applied to the Committee of Adjustment (COA) for the approval of two variances to retain the existing conditions at the front of the house.

The COA heard the Application on July 21, 2021, and approved the two variances. On August 9, 2021, the neighbours residing at 321 Oakwood, Yifan Chen and Joao Louro, appealed the decision made by the COA to the Toronto Local Appeal Body (TLAB). It is important to note that the Appeal does not raise any questions, much less concerns, about the requested variance at the front of the house, but focuses on the extension, planned at the back of the house.

On October 22, 2021, David Neligan, a lawyer with Aird & Berlis, who had been retained by the Applicants, wrote to the Appellants, informing them that their Appeal was “frivolous and vexatious”, and that he had instructions from his clients to bring forward a Motion to dismiss the Appeal, in case the Appellants did not withdraw the Appeal voluntarily. On November 1, 2021, Mathew Helfand, another lawyer with Aird & Berlis, sent the Appellants a follow up email, asking for confirmation of receipt of the letter sent on October 22, 2021- there is no reply on record from the Appellants, in response to either communication.

On December 16, 2021, the TLAB received the following email from the Applicants:

To Whom It May Concern:

I am one of the property owners of 323 Oakwood Avenue. A letter was sent on December 16th to your office by our legal representative to request that the hearing date be released, and the application to be recognized as abandoned. We have not heard a response, nor have we seen any updates on any website.

David Stone

It may be noted that the TLAB is not in receipt of any communication from any lawyer, stating that the Appeal respecting 323 Oakwood is to be “recognized as abandoned”, and/or the “hearing date is to be released”.

The TLAB responded on December 17, 2021 to the above communication as follows:

Good Afternoon,

Thank you for contacting the Toronto Local Appeal Body.

Please note that to withdraw an appeal, we need to receive an email or letter directly from the Appellant (Yifan Chen) stating that they are withdrawing their appeal.

Kind Regards,

Tyra Dorsey

Acting Supervisor

On the same day (December 17, 2021), the TLAB received the following communication from the Applicants:

“We are not withdrawing the appeal. Rather, the relief we were requesting from the Committee of Adjustment is no longer necessary. Our updated, current drawings are approved by zoning at the Building Department. We no longer need the setback due to changes we have made to the permit application, and thus no longer need the hearing”.

As resources are quite scarce, we are requesting that the application be considered abandoned, and the hearing date be vacated as it is no longer necessary for our zoning approval for the permit.”

When requested for direction on this issue by TLAB staff, I asked that an email be sent to the Parties, confirming that the matter could be abandoned only if the Appellants withdraw the Appeal- I understand that this email was sent out on December 23, 2021.

At the beginning of the Hearing held on January 4, 2022, I asked the Applicants to clarify their position with respect to how they wanted to proceed, and was informed that they wanted to proceed with the Hearing, with an abundance of caution, “just in case the variance was needed.”.

At this Hearing, Erin Bell represented the Applicants, while Yi Fan Chen represented the Appellants.

By way of an editorial note consistent with the Decision released on January 11, 2022, it was evident to me that the Appellant, was confused about the purpose of the Hearing, because she thought that the TLAB was the right forum to voice her concerns about the additions planned by the Applicants at the back of their house, when the variance before the TLAB focused on the front of the house, with the intention of retaining the façade in an “as is” condition.

I issued my Decision on January 11, 2022, in which I dismissed the Appeal, and approved the single variance requested by the Applicants.

On January 14, 2022, David Stone, one of the Applicants, brought forward a Motion seeking costs for \$ 30,302.95 from the Appellants, Yi Fan Chen and Joao Lourenco. The specifics of the costs are as follows:

- a) \$4,119.95 for legal fees incurred in preparing for the hearing

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- b) \$7,685.41 for the Planning Report prepared by Registered Professional Planner Michael Larkin
- c) \$7,345 for consulting services rendered by Architect Allan Stone in the preparation of the Planning Report and the attendance of strategy meetings with Counsel and Planner
- d) \$7,600 for rent incurred during the 4-month delay in obtaining a building permit as a result of the appeal
- e) \$162.06 for property insurance on the rental property incurred during the 4-month delay in obtaining a building permit as a result of the appeal
- f) \$3,390.53 for construction liability insurance on the new property during the 4-month delay in obtaining a building permit as a result of the appeal.

The Applicants put forward the following reasons in support of their Motion. According to the Applicants, the Appellants:

- i) persistently and without reasonable grounds commenced proceedings that constitute an abuse of the TLAB process;
- ii) did not provide any relevant written reasons and grounds for the appeal;
- iii) initiated proceedings relating to matters which are outside of the jurisdiction of the TLAB
- iv) failed to present evidence and persisted in discussing irrelevant issues; and
- v) initiated proceedings in bad faith and solely for the purpose of delay.

The reasons stated above are restated by way of the Affidavit, sworn by David Stone, dated January 14, 2022. According to this Affidavit, “the unreasonable actions taken by the Appellants” include the following “frivolous, vexatious, and in bad faith conduct” actions

(a) failing to follow the instructions provided in the appeal form by not including any references to the Bylaw 569-2013 set-back variance that was discussed at the Committee of Adjustment.

(b) abusing the intended purpose of the appeal process by using their appeal to voice irrelevant grievances with issues that are outside of the jurisdiction of TLAB, including the proposed colour of the property’s rear

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addition, dimensions of the rear addition and deck, and placement of the rear staircase.

(c) failing to present any evidence or witness statements to support an appeal of the Committee of Adjustment decision on the set back variance relating to Bylaw 569-2013.

(d) refusing to discuss the set-back variance at the TLAB hearing, and, despite explicitly being told by the TLAB Chair that the only matter TLAB had the jurisdiction to consider was the set-back variance, persisting in introducing irrelevant evidence and discussing irrelevant issues that had nothing to do with the set-back variance.

(e) introducing new issues and documents at the hearing that were not previously disclosed.

(f) ignoring all overtures of communication made by the Moving Party and the Moving Party's counsel, who on several occasions attempted to open a dialogue about the appeal, which could have brought the TLAB process to a speedier resolution and avoided the need for a hearing.

(g) admitting both in the hearing and in an email sent to TLAB after the hearing that the motivation for submitting the TLAB appeal was not because of any objection to the front set back variance, but rather was motivated by objections to the design of the rear addition, which is being built entirely as of right.

The Applicants claimed that as a result of the Appeal, the construction of the house was "delayed" at significant cost to themselves, because the Appellants objected to "issues that were not within the jurisdiction of TLAB". The Applicants also stated that they also incurred significant costs in hiring counsel and professionals to respond to the Appeal, "*since they were obligated, as long as there was a appeal in existence, to prove that the variances met the four tests as stipulated by the Committee of Adjustment.*"

In addition to a completed Statement of Motion Form Number 7, the Applicants submitted a total of 19 Exhibits, including a completed Form 10 (Affirmation of Costs).

The Applicants' submission includes copies of invoices from their lawyers, planner and architect, property insurance on the rental property that was being rented by them at the time of the Hearing, and construction insurance preparation for the extension to be built at the back of their house. By way of an editorial note, these submissions are labelled Exhibits 14-19 in their submission.

The Appellants included excerpts, transcribed on the basis of the Oral Record of the Hearing, in support their Motion.

Summary of the Appellant's Submissions

In her Response dated January 24, 2022, Appellant Yi Fan Chen refused to pay the costs, cited in the Motion for Costs, either in part, or in whole, for the following reasons:

- **There was no reason for the Applicants to retain a lawyer and a planner:** The Appellant quotes from the TLAB's Public Guide to conclude that the Applicants could have represented themselves at the Appeal, without the assistance of a lawyer and a planner. According to the Appellant, the presence of the lawyer and planner are "not obligatory".
- **There is no demonstrable connection between some of the costs listed in the Motion by the Applicants, and the Appellant:** The Appellants point out that the rent and rental insurance costs incurred by the Applicants are "personal" experiences, which are consequently, not caused by the Appellants. The Appellants assert that they did not play any part in the "delay in the construction project" between the time between the Appeal is filed, and the Hearing is completed, is controlled by the TLAB, and not the Appellant.
- **The reasons for not responding to communication from the Applicant:** Speaking to the lack of a response to the letter sent by the Applicant's lawyer, wherein he requested the Appellants to withdraw the Appeal, failing which he would bring forward a Motion to dismiss the Appeal, the Appellant said that *"lawyer requested me to withdraw the Hearing or the lawyer will dismiss the Hearing. This letter make me shock and frustration"*
- **No communication from the TLAB about the Appeal's "Non-Compliance":** The Appellant discusses the TLAB's process for processing an Appeal, with specific reference to the Administrative screening component of the same. She states if there were flaws with her Appeal, then the TLAB Staff would have issued a "Notice of Non-Compliance". By way of an editorial note, my conclusion from reading the Appellant's factum is that in her opinion, she cannot be held responsible for the costs cited by the Applicants, because the Appeal filed by her was found to be compliant-*"If My Appeal does not obey both of TLAB Rules and Procedure and Planning Act., TLAB Case Manager will not give me chance to abuse of the TLAB system to appeal in any bad faith"*.

Reply from the Applicants

In their Reply dated 27 January 2022, the Applicants emphasize the following:

- They reiterate that they had to retain a planner to “defend ourselves, not only against the contents of the Appeal, but to re-prove the validity of the original variance sought at the Committee of Adjustment.” Further, they add that “we hired an expert Representative (counsel) to help guide us through the TLAB process to ensure that the rules and procedures were being followed, that our family was protected, our rights protected, and most importantly, rules upheld”.
- After insisting that “With respect to the four month delay, the four-month delay was absolutely the result of the frivolous, bad-faith appeal launched by the Responding Party.”, the Applicants provide an analysis of the Appellant’s submissions (summarized earlier in this Section), which emphasizes that while the Appellant was clear that the variance requested was at the front of the house, but nevertheless pursued the Appeal to address the development at the back of the house, which is outside the TLAB’s jurisdiction. Their analysis demonstrates how the Appellant confused the use of the word “compliant”, which is to be interpreted as “administratively compliant”, with being “legally compliant”. The Applicants also draw attention to the Appellant’s awareness that the TLAB would schedule a Hearing approximately a hundred days after the filing of an Appeal, to conclude that the delay had been caused deliberately, and willfully. The Applicants also cite the Appellant’s ignoring all attempts, and overtures, made on their behalf, to engage in a dialogue with themselves, “which could have led to an early resolution and cut down on the length of the delay and costs”.

Lastly, in response to the Appellants’ allegation that they were never informed about what steps the Applicants wanted to take, the latter insist that they informed the Appellants of their intentions, and steps being taken throughout the Proceeding, including having their lawyer correspond with the Appellant. They assert that they made their expectations clear to the Appellant at each and every step of this process, including the expectation to provide evidence to support her Appeal, and the potential liability for costs.

MATTERS IN ISSUE

The Applicants, who are the Moving Party with respect to this Motion, have filed a Motion to Recover Costs from the Appellants, Yifan "Helen" Chen and Joao "John" Lourenco.

According to the Applicants, the unreasonable actions taken by the Appellants include the following “frivolous, vexatious, and in bad faith conduct”:

(a) failing to follow the instructions provided in the appeal form by not including any references to the Bylaw 569-2013 set back variance that was discussed at the Committee of Adjustment.

(b) abusing the intended purpose of the appeal process by using their appeal to voice irrelevant grievances with issues that are outside of the jurisdiction of

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TLAB, including the proposed colour of the property's rear addition, dimensions of the rear addition and deck, and placement of the rear staircase.

(c) failing to present any evidence or witness statements to support an appeal of the Committee of Adjustment decision on the set back variance relating to Bylaw 569-2013.

(d) refusing to discuss the set-back variance at the TLAB hearing, and, despite explicitly being told by the TLAB Chair that the only matter TLAB had the jurisdiction to consider was the set-back variance, persisting in introducing irrelevant evidence and discussing irrelevant issues that had nothing to do with the set-back variance.

(e) introducing new issues and documents at the hearing that were not previously disclosed.

(f) ignoring all overtures of communication made by the Moving Party and the Moving Party's counsel, who on several occasions attempted to open a dialogue about the appeal, which could have brought the TLAB process to a speedier resolution and avoided the need for a hearing.

(g) admitting both in the hearing and in an email sent to TLAB after the hearing that the motivation for submitting the TLAB appeal was not because of any objection to the front set back variance, but rather was motivated by objections to the design of the rear addition, which is being built entirely as of right.

The relief being sought is in the amount of \$30,302.95. The breakdown of costs is as follows:

a) \$4,119.95 for legal fees incurred in preparing for the hearing.

b) \$7,685.41 for the Planning Report prepared by Registered Professional Planner Michael Larkin and submitted as an Expert Witness Statement.

c) \$7,345 for consulting services rendered by Architect Allan Stone in preparation of the Planning Report and the attendance of meetings with Counsel and Planner.

d) \$7,600 for rent incurred during the 4-month delay in obtaining a building permit as a result of the appeal.

e) \$162.06 for property insurance on the rental property incurred during the 4-month delay in obtaining a building permit as a result of the appeal.

f) \$3,390.53 for construction liability insurance on the new property during the 4-month delay in obtaining a building permit as a result of the appeal.

JURISDICTION

28. COSTS

Who May Request an order for Costs

28.1 Only a Party or a Person who has brought a Motion in the Proceeding may seek an award of costs.

28.2 A request for costs may be made at any stage in a Proceeding but in all cases shall be made no later than 30 Days after a written decision is issued by the TLAB.

Member Seized to Consider Costs Order

28.3 The Member who conducts or conducted the Proceeding in which a request for costs is made shall make the decision regarding costs

Submissions Respecting Costs

28.4 Notwithstanding Rule 17.4 all submissions for a request for costs shall be made by written Motion and Served on all Parties and Filed with the TLAB, unless a Party satisfies the TLAB that to do so is likely to cause the Party significant prejudice.

28.5 Submissions for a request for costs shall address:

- a) the reasons for the request and the amount requested
- b) an estimate of any extra preparation or Hearing time, and a breakdown of all associated rates, fees and disbursements, caused by the conduct alleged to attract costs and specifically any of those matters outlined in Rule 28.6
- c) copies of supporting invoices for expenses claimed or an Affidavit of a Person responsible for payment of those expenses verifying the expenses were properly incurred; and
- d) Attach an Affidavit in which the Party swears the costs claimed were incurred directly and necessarily.

Considerations for Costs Award

28.6 Notwithstanding the TLAB's broad jurisdiction to award costs the TLAB is committed to an approach to awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a Proceeding. In

determining whether to award costs against a Party the TLAB may consider the following:

- a) Whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the TLAB notice;
- b) Whether a Party failed to co-operate with others or the TLAB, changed a position without notice or introduced an issue or evidence not previously disclosed
- c) Whether a Party failed to act in a timely manner;
- d) Whether a Party failed to comply with the TLAB's Rules or procedural orders;
- e) Whether a Party caused unnecessary adjournments, delays or failed to adequately prepare for a Proceeding;
- f) Whether a Party failed to present evidence, continued to deal with irrelevant issues, or a Party asked questions or acted in a manner that the TLAB determined to be improper;
- g) Whether a Party failed to make reasonable efforts to combine submissions with another Party with similar or identical issues;
- h) Whether a Party acted disrespectfully or maligned the character of another Party or Participant; or
- i) Whether a Party presented false or misleading evidence

Threshold relating to Costs

28.7 In all cases a Member shall not order costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is unreasonable, frivolous, vexatious or in bad faith.

Interest on Award of Costs

28.8 Costs bear interest at the same rate as provided in the Courts of Justice Act

ANALYSIS, FINDINGS, REASONS

I have reviewed the following materials to arrive at a Decision regarding the Motion for Costs submitted by the Applicants:

- The COA Decision with respect to the Subject Property, dated July 21, 2021.
- The Applicants' Motion Record dated January 14, 2022 which includes Notice of Motion, Affidavits, and Exhibits numbered 1-19.

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- The Appellant's Notice of Response to Motion, dated January 24, 2022, which includes an Affidavit, and other proof
- Correspondence between the TLAB and the Parties prior to the Hearing, with specific references to emails between December 16, 2021, and December 23, 2021 (by way of an editorial note, the dates provided reflect correspondence between myself and the TLAB)
- The Webex recording of the Hearing conducted on January 4, 2022- I had the ability to rely on the actual hearing in its entirety, and consequently did not need to rely on the written, transcribed excerpts from the Hearing, submitted by the Applicants. I note that the Applicants did not submit the entire record of the Hearing, but submitted excerpts, which supported their perspective.

It is important to understand that the specific categories for which the Moving Party wants to be compensated for (recited in the "Matters in Issue" Section of this Decision) have to correspond to Sections 28.1-28.8 of the TLAB's Rules of Practice and Procedure, otherwise referred to as the "Rules" (recited in the "Jurisdiction" Section of this Decision), in order to establish the necessary nexus, for consideration under the TLAB's Rules. Despite my reading the Motion material numerous times on numerous occasions, I find that there is a pronounced nebulousness with respect to establishment of the necessary nexus, between the reasons advanced by the Applicants regarding why they believe that they deserve compensation, and the Rules under which costs can be ordered, leaving it to me to establish what that connection may be. As an example of the aforementioned nebulousness, the Applicants asserting that the building was "delayed at significant cost" to themselves, because the Appellants objected to "issues that were not within the jurisdiction of TLAB" is not helpful, because the Appellants' objecting to an issue outside the TLAB's jurisdiction, does not necessarily mean that the construction of the building was delayed, unless the objection is such that it makes it impossible to obtain a Building Permit, without which new construction cannot begin. While the Applicants vociferously assert that "*With respect to the four month delay, the four-month delay was absolutely the result of the frivolous, bad-faith appeal launched by the Responding Party*", there is no discussion whatsoever of how this "four month delay" impedes their ability to obtain a Building Permit, the *sine qua non* to the construction to build the extension- the Motion material is mum on whether or not a Permit was applied for, or not.

To find the connection between the stated grounds and the Rules under which costs can be ordered, I rely on the principle of impact on the Party submitting the Motion for Costs- it is important for the Applicants to demonstrate that ***they were impacted negatively by the action of the Appellants***, (my emphasis) by ***an action taken by the Applicants*** (my emphasis), such that the correlation between the actions and the impact can be established.

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According to the Applicants, it is the Appeal to the TLAB that prevented them from commencing construction of the extension at the back of the house. A leitmotif of the Applicants' submissions, and evidence, was that the Appeal focuses on the setback at the front of the house, while the addition to the house is proposed at the back of the house, and not the front of the house- the reiteration of this feature raises an important question about whether there exists a demonstrable nexus between the Appellants' action, and the alleged impact on the Applicants. The importance of this question is heightened by the Applicants' insistence that the extension will be "built as-of-right.", and does not require variances, which begs the question "Why would the Applicants be impeded from constructing the extension at the back of the house, if it is being built "as-of-right", and has no demonstrable connection to the requested variance, which is at the front of the house, and is an existing situation, to boot?"

The answer to this question about whether such a nexus exists, is answered by relying on the evidence of the Applicants at the Hearing completed on January 4, 2022, where it is evident that the Applicants were certainly eligible to file for a Building Permit, without waiting for the Hearing before the TLAB to be completed. The key phrases, culled from the Applicant's evidence, are reproduced below:

"The Planning Examiner, (Jordan last name inaudible) had told us that he had completed the review for the application, had cleared zoning and that the variances were covered"

"Our counsel felt confident enough on the basis of the statement from Jordan that he wrote to the TLAB stating that the Hearing was not needed. However we don't have the Permit in hand as of yet. Since we are here anyway, I would like to move ahead with the hearing since I would like to cover all my bases"

On the basis of the above evidence, I find that the Applicants could have certainly applied for a Building Permit, without waiting for the outcome of the Appeal to the TLAB, on the basis of an opinion they had received from their lawyer- whether they had already applied for the Permit before the Hearing is a matter of conjecture, with no bearing on the final result of this Decision. In any case, I am not surprised by the advice from their Counsel, as well as the ability of the Applicants to obtain a Building Permit, without waiting for the outcome of the Appeal, because the two issues (applying for a Building Permit and winning the Appeal) are mutually exclusive- at the risk of belabouring the point, the construction impacts the back of the house, and is being built "as-of-right", with no variances being requested, while the variance before the TLAB impacts the front of the house, and looks to legalize an as-built situation.

I find that on the basis of the above analysis, the cause of the so-called "delay" in the beginning the construction at the back of the house, is the lack of a receipt of a Building Permit by the Applicants, on or before January 4, 2022, when the

Hearing was held, which is completely independent of any issues caused by the Appeal, including when it would be heard, and when the Decision would be issued. While the Applicants' preference to "cover all bases" by completing the Hearing, as opposed to bringing forward a Motion to dismiss the same, needs to be respected, it would be incorrect to think that the Applicants would have been unable to apply for a Permit, without completing the Hearing, and having the variance approved. From a timelines perspective, there may have been an overlap between the Appeal to the TLAB, and the Application for a Building Permit- however, I find that while there may be a possible overlap in timelines between these two events, it cannot be interpreted into as a "cause and effect" relationship, where the former has to be completed in order to trigger the second event.

As a result, I find that the Motion for Costs does not demonstrate one of the key contentions in such a Motion, namely that the actions one Party negatively impacted the other, such the latter was inconvenienced, when not impeded from achieving their goal.

By not bringing forward a Motion to have the Appeal dismissed without a Hearing, when they were aware of such an option on the basis of communication from their own lawyer, I find that the Appellants did not pursue the shortest, and most effective path to complete the Proceeding, without any negative impact whatsoever on their interests- this finding contradicts their assertions about trying to finish the proceedings in the most cost effective way possible.

Henceforth, I refer to my finding about the mutual exclusivity of the Appeal to the TLAB, and the Application for a Building Permit as the "Primary Finding", which will help me make findings on other issues. I recite the specific allegations made by the Applicants, followed by my analysis and findings. I have grouped specific allegations where possible because they address a common issue.

- (a) *failing to follow the instructions provided in the appeal form by not including any references to the Bylaw 569-2013 set-back variance that was discussed at the Committee of Adjustment.*
- (b) *abusing the intended purpose of the appeal process by using their appeal to voice irrelevant grievances with issues that are outside of the jurisdiction of TLAB, including the proposed colour of the property's rear addition, dimensions of the rear addition and deck, and placement of the rear staircase.*
- (c) *failing to present any evidence or witness statements to support an appeal of the Committee of Adjustment decision on the set back variance relating to Bylaw 569-2013.*
- (e) *introducing new issues and documents at the hearing that were not*

previously disclosed.

(g) admitting both in the hearing and in an email sent to TLAB after the hearing that the motivation for submitting the TLAB appeal was not because of any objection to the front set back variance, but rather was motivated by objections to the design of the rear addition, which is being built entirely as of right.

The key question to be asked is if any of these actions prevented the Applicants from achieving their stated objective of applying and obtaining a Building Permit, the essential prerequisite for beginning construction. On the basis of the primary finding which proves that there is no correlation between the Appeal, and the Building Permit Application, I find that none of the grounds cited on the previous page, singly or collectively, constitute an error so egregious that it can result in an Order for Costs.

(d) refusing to discuss the set-back variance at the TLAB hearing, and, despite explicitly being told by the TLAB Chair that the only matter TLAB had the jurisdiction to consider was the set-back variance, persisting in introducing irrelevant evidence and discussing irrelevant issues that had nothing to do with the set-back variance.

I don't understand how the Applicant concluded that the Appellant "refused" to discuss the setback variance, when the latter stated that they were not in opposition to the variance before the TLAB. Moreover, the logic of how the Applicants can claim to be so negatively impacted by the Appellants' not following through on **my instructions** (my emphasis), that they deserve to be financially compensated, is incomprehensible.

e) *ignoring all overtures of communication made by the Moving Party and the Moving Party's counsel, who on several occasions attempted to open a dialogue about the appeal, which could have brought the TLAB process to a speedier resolution and avoided the need for a hearing*

I agree with the Applicants that the Appellants could have been more pro- active in responding to letters, and emails from the former, which may have resulted in a quicker resolution of mutual differences. However, the mere act of not responding to overtures from the Applicants, is less than sufficient as a reason to award costs, especially when the Applicants did not hasten to end the process quickly, by bringing forward a Motion for having the Appeal dismissed without a Hearing., an option that was actually discussed in their communication with the Appellant, on October 22, 2021, but not acted upon, for reasons not discussed in the Motion material, or at the Hearing.

On the basis of the above analysis, I find that none of the clauses (a)-(g) submitted by the Applicants, to justify their Motion for Costs, can be upheld, resulting in costs, to be borne by the Appellants. I reiterate that no nexus has

been established between the causes cited by the Applicants for obtaining costs from the Appellant, and TLAB's Rules for ordering costs.

As a consequence, I find that the Appellants' Motion for Costs cannot be justified, and has to be dismissed.

MOTION DECISION AND ORDER

1. The Motion for Costs brought forward by the Applicants, with respect to the Appeal at 323 Oakwood, is dismissed.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body