

MOTION DECISION AND ORDER

Decision Issue Date **Thursday, May 12, 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): Michael Gardiner, Moez Kassam

Applicant: Goldberg Group

Property Address/Description: 43 Russell Hill Rd

Committee of Adjustment Case File Number: 21 196314 STE 12 MV (A1029/21TEY);
21 124928 STE 12 MV (A0320/21TEY)

TLAB Case File Number: 21 229075 S45 12 TLAB; 21 196982 S45 12 TLAB

Written Motion Date: Monday, May 16, 2022

DECISION DELIVERED BY Panel Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

21 229075 S45 12 TLAB

Primary Owner	Marissa Kassam
Party/ Owner	Moez Kassam
Party's Legal Rep.	David Bronskill
Appellant	Michael Gardiner
Appellant's Legal Rep.	Alan Heisey

21 196982 S45 12 TLAB

Owner	Marissa Kassam
Appellant/ Owner	Moez Kassam
Appellant's Legal Rep.	David Bronskill

Decision of Toronto Local Appeal Body Panel Member: G. Swinkin
TLAB Case File Number: 21 229075 S45 12 TLAB
21 196982 S45 12 TLAB

Party Michael Gardiner

Party's Legal Rep. Alan Heisey

21 229075 S45 12 TLAB and 21 196982 S45 12 TLAB

Applicant Goldberg Group

Participant Bina Shah

Participant Rita Shefsky

Participant Tracy Simpson

Participant Edward Peter Nash

Participant Kelly Gray

INTRODUCTION

This decision relates to a motion brought by Mr. A. Heisey, counsel for the Appellant (Michael Gardiner), who is the Appellant with respect to the second of two Committee of Adjustment decisions regarding the property at 43 Russell Hill Road (“the subject property”).

For clarity, TLAB Case File Number 21 196982 S45 12 TLAB relates to Committee of Adjustment (“C.A.”) File ‘A’ 320/21 (“A-320”), the decision which issued on July 22, 2021. This was a decision of refusal of the requested variances enumerated in that application. That decision has been appealed to TLAB by the applicant/owner, as represented by Mr. D. Bronskill.

The applicant/owner then filed a subsequent application with the C.A., while the appeal with respect to A-320 was pending, again respecting the subject property, seeking similar relief as in the first application but eliminating the head of relief relating to the establishment of a rooftop terrace. That application proceeded before the C.A. as File ‘A’ 1029/21 (“A-1029”). The C.A. approved that application by its decision issued on October 7, 2021. That decision was appealed by Mr. Heisey on behalf of his client, Mr. Gardiner. This appeal bears TLAB Case File Number 21 229075 S45 12 TLAB.

TLAB has set both appeals down to be heard together, the hearing date for which is June 22, 2022, one day being fixed for the hearing.

BACKGROUND

The Notice of Motion is supported by the declaration of Chris Chan, the land use planner who Mr. Heisey proposes to call as a witness in the TLAB hearing, and relates to the participation of both Mr. Heisey and Mr. Chan in an Ontario Land Tribunal hearing concerning planning matters in the City of Vaughan which is scheduled to begin on

June 20 and has been allocated nine weeks of hearing time, following which Mr. Heisey apparently has intended to take some vacation time until the end of the month of August.

MATTERS IN ISSUE

Due to the fixing of these hearing dates, Mr. Heisey asserts a conflict which results in his inability to appear at the TLAB hearing on the scheduled hearing date of June 22nd and he is seeking an adjournment of the TLAB hearing to a date no earlier than September, 2022.

JURISDICTION

Requests for adjournment are governed by Rule 23 of the TLAB Rules of Practice and Procedure, which sets out the considerations in granting adjournments and the powers of TLAB upon an adjournment motion.

EVIDENCE

As this is proceeding as a written motion, the evidence is as set out in the Appellant's Motion Record. Mr. Bronskill did not file a Notice of Response but sent an email on May 10, 2022 directed to Mr. Heisey and copied to various other persons involved in the proceeding advising that his client does not oppose the requested adjournment.

ANALYSIS, FINDINGS, REASONS

Rule 17.2 of the TLAB Rules of Practice and Procedure anticipates consent adjournments and makes provision the issuance of a revised Notice of Hearing. That rule comes into play when an adjourn-to date has been obtained from TLAB and all Parties consent.

In this case, as the request has been initiated by a Notice of Motion, Rule 23 governs. Rule 23.3 sets out the considerations in granting adjournments. Key considerations applicable in this instance are the reasons for the adjournment, the interest of the Parties in having a full and fair proceeding, the position of the other Parties on the request and whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others.

The TLAB is empowered by Rule 23.4 (f) to grant an indefinite adjournment if the request is made by a Party and is accepted by the TLAB as reasonable and the TLAB finds no substantial prejudice to the other Parties or to the TLAB, in which case the hearing is to be rescheduled as the TLAB directs.

As the other Party does not oppose the request for adjournment and the Appellant has set forth grounds for the adjournment request which assert that prejudice may occur in the absence of an adjournment, the request for adjournment will be allowed.

DECISION AND ORDER

The Motion for Adjournment of the aforesaid combined appeal hearing is allowed and the hearing is adjourned sine die. The TLAB Case Manager will contact the Parties or their counsel to canvas available dates for the rescheduling of the combined hearing, and the appropriate allocation of days to accommodate it, and will issue a fresh Notice of Hearing regarding same.

This Member is not seized of the hearing.



X

G. Swinkin
Panel Chair, Toronto Local Appeal Body