

INTERIM DECISION AND ORDER

Decision Issue Date Tuesday, May 24, 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): CITY OF TORONTO (MICHAEL MAHONEY)

Applicant(s): JON CARLOS TSIFILIDIS

Property Address/Description: 1882 LAWRENCE AVE E

Committee of Adjustment File

Number(s): 20 208824 ESC 21 MV (A0250/20SC)

TLAB Case File Number(s): 21 164042 S45 21 TLAB

Hearing date: Monday May 2, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant	City of Toronto
Appellant's Legal Rep.	Michael Mahoney
Applicant	Jon Carlos Tsifilidis

INTRODUCTION AND BACKGROUND

I met with the Parties on May 2, 2022, by way of a videoconference to follow up on questions identified in my earlier Interim Decision dated March 15, 2022.

After the commencement of the Hearing, I was informed that the Applicants had "withdrawn" their Application on April 28, 2022; I acknowledged their decision to

withdraw the Application, and stated that I had not been made aware of the withdrawal of the Application.

The Applicants also requested that the Decision be phrased such that they could resume their Application for variances to the same property, if and when appropriate. In response to this request, I suggested that the Withdrawal Decision could be worded as “The Application is withdrawn without prejudice” based on my familiarity with decisions issued under similar circumstances, by other Tribunals. Mr. Mahoney, the City’s lawyer, opined that the use of the expression “without prejudice” may not be adequate, to achieve the intended objective.

Given that we could not agree on the language to reflect the circumstances of this Appeal, I suggested that the Parties have a discussion amongst themselves, and recommend language to the TLAB that they deemed to be appropriate, under the circumstances. The Appellants said that they would have a “discussion”, and “get back to the TLAB within a few days”.

Three weeks after the Hearing, as of May 24, 2021, I understand that no communication has been received by the TLAB from the Parties, by way of follow up from the above discussion.

I am left with no choice but to send out this reminder to the Parties, by way of an Interim Decision. It is important that the Parties also consider important issues identified in the Analysis, Findings and Reasons Section of this Interim Decision, when having discussions, to recommend appropriate language to the TLAB.

ANALYSIS, FINDINGS, REASONS

I find it important to draw the attention of the Parties to the following issues, which need to be taken into account to recommend appropriate language for the withdrawal of the Application respecting 1882 Lawrence Ave E:

- All Applications come to the TLAB in the form of an Appeal, irrespective of whether the Applicant is the Appellant.
- The standard language used in TLAB Decisions is premised on a withdrawal of the Appeal by the Appellant, irrespective of whether the Applicant is the Appellant.
- In circumstances where the Appellant is not the Applicant, it is necessary that there be explicit acknowledgement of the withdrawal of the Application by the Appellant. While the withdrawal of the Appeal may be a **logical outcome** (my emphasis) of the withdrawal of the Application, it cannot be construed to be a legal outcome of the withdrawal, unless there is specific communication from the Appellant to this effect, paving the way for the TLAB’s issuing a standard Withdrawal Decision, as discussed above.
- The impact of a standard Withdrawal Decision by the TLAB, results in the COA’s decision on the same file being upheld, irrespective of whether the latter is an approval, or refusal of the requested variances. In the case of 1882 Lawrence

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Ave E., the COA approved the requested variances put forward by the Applicant, which were then appealed to the TLAB by the City. While the requests from the Applicants about being allowed to bring back the Application to the TLAB suggests that the COA decision does not have to be upheld by way of a Final Decision by the TLAB, there is no explicit information, nor clarity on this issue.

Consequently, should the Applicants and Appellants decide that the Application may be withdrawn such that it can be reinstated when and where necessary, it is important that they have a discussion amongst themselves, and recommend language to the TLAB about how the Decision may be phrased, such that issues listed in this Section, be resolved to the satisfaction of the TLAB

I believe that the most expeditious method to discuss the above issues, and resolve them to everybody's satisfaction, would be to have a videoconference, between the Parties, and myself. I have therefore instructed the TLAB Staff to reach out to the Parties to identify opportunities for a videoconference in July 2022, lasting no more than two hours, to resolve the following questions:

- A) What is the Appellant's Response to the request by the Applicants to withdraw their Application, and what impact does the Appellant's Response have on the Appeal? Can the Appeal be withdrawn because the Application has been withdrawn?
- B) What is the impact of the Application being withdrawn on the decision made by the COA, with respect to this file on May 18, 2021?
- C) What recommendations do the Parties have with respect to how the Withdrawal Decision may be phrased, such that the Application can be reinstated, given the decision made by the COA on this file?

The Parties can raise any other questions at the Hearing that they deem appropriate, after communicating the questions to the other Party, and the TLAB.

INTERIM DECISION AND ORDER.

1. The TLAB staff are instructed to reach out to the Parties involved with 1882 Lawrence Ave E., and identify dates for a Hearing to be held by way of a videoconference, lasting no more than two hours, in July 2022.
2. At the Hearing, the Parties are required to discuss the following questions:
 - A) What is the Appellant's Response to the request by the Applicants to withdraw their Application, and what impact does the Appellant's Response have on the Appeal? Can the Appeal be withdrawn because the Application has been withdrawn?

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- A)** What is the impact of the Appeal being withdrawn on the decision made by the COA , with respect to this file on May 18, 2021?
- B)** What recommendations do the Parties have with respect to how the Withdrawal Decision may be phrased, such that the Application can be reinstated, given the decision made by the COA on this file?

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body