

DECISION AND ORDER

Decision Issue Date Tuesday, June 28, 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): MURAT DOGAN

Applicant: ANGUS SKENE

Property Address/Description: 339 WINDERMERE AVE

Committee of Adjustment Case File Number: 21 119898 STE 04 MV

TLAB Case File Number: **22 100277 S45 04 TLAB**

Hearing date: Thursday, June 23, 2022

DECISION DELIVERED BY TLAB Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANT

Appellant	MURAT DOGAN
Owner	SONG KIAT LEE
Applicant	ANGUS SKENE
Participant	GOTHAM CHANDIDAS

INTRODUCTION AND BACKGROUND

This is a matter that was scheduled for a 'virtual' Hearing in respect of 339 Windermere Avenue (subject property). The matter relates to an Appeal by Murat Dogan (Appellant) of a decision of the City of Toronto (City) Committee of Adjustment (COA) conditionally approving variances to permit the alteration of the existing two-storey detached dwelling by constructing a new front porch, a front, second storey balcony, a rear, two-storey addition, a front basement walkout, and converting the basement into a secondary suite.

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Additionally, the Applicant proposes to create two tandem parking spaces in the rear yard that will be accessed from the side yard (Mayfield Avenue).

The Appellant, Murat Dogan, appealed (Appeal) the COA decision to the TLAB, and the Tribunal set a Hearing date for June 23, 2002.

On June 8, 2022, Angus Skene (Applicant), the Owner's authorized representative, filed a Notice of Motion (Form 7) and an associated Affidavit (Form 10) with the Toronto Local Appeal Body (TLAB) requesting that the TLAB dismiss the Appeal without a Hearing. The Motion was filed in accordance with Rule 17 of the TLAB's Rules of Practice and Procedure (Rules).

In the Notice of Motion, Mr. Skene submits that the Appeal should be dismissed on the grounds outlined in Rule 9 of the TLAB's Rules, under the heading *Adjudicative Screening*, and specifically subrules 9.1 a) and h):

- a) *The reasons set out in Form 1 (Notice of Appeal) do not disclose any apparent land use planning grounds upon which the TLAB could allow all or part of the Appeal.*

- h) *The proceeding relates to matters which are outside the jurisdiction of the TLAB.*

Due to an administrative error, I was only made aware of the Notice of Motion request on the afternoon of Tuesday, June 22, 2022, less than two (2) days prior to the scheduled Hearing. At that time, I was notified by Court Services Tribunal staff that the Notice of Motion, the Affidavit, and a Request to Summons decision in this matter, had not been uploaded to the TLAB's Application Information Centre (AIC) by TLAB staff.

Unfortunately, the TLAB staff Case Manager for this file had been away from the office and the relevant files, above cited, had not been brought up to date resulting in the documents being unavailable to the presiding Member for review and consideration in advance of the Hearing.

Once I became aware of the Notice of Motion and the associated documents filed in this regard, I reviewed each in anticipation of the scheduled Hearing.

A Notice of Motion filed with the TLAB and served on all the Parties and Participants must be processed in accordance with the Rule 17 of the TLAB's Rules, specifically the following subrules:

- *17.4 – A Motion shall be heard by Oral Hearing and the Moving Party shall obtain from the TLAB a Motion date prior to Service of eth Notice of Motion unless the TLAB directs otherwise.*
- *17.9 – If a Party needs to respond to a Motion, a Responding Party shall Serve on all Parties and participants a Notice of Response to Motion, using Form 8 and file same with the TLAB at least 7 Dyas before the Date the Motion is to be held by Oral Hearing unless the TLAB directs otherwise.*

- *17.11 – If a Moving Party needs to reply to any new issues, facts or Documents raised in the Notice of Response to Motion, the Moving Party shall Serve on all Parties and Participants a Notice of Reply to Response to Motion, using Form 9, and File same with the TLAB at least 4 Days before the date of the Motion is held by Oral Hearing unless the TLAB directs otherwise.*

Given that the Motion requests that the TLAB dismiss the Appeal without a Hearing, the matter falls under Rule 9 of the TLAB's Rules. More specifically, Rule 9.1 allows the TLAB, in the case of an appeal under subsection 45(12) of the *Planning Act*, and on the grounds included in that subrule, to propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing.

Rule 9.3 requires that where the TLAB proposes to dismiss all or part of an Appeal under Rule 9.1, it shall give Notice of Proposed Dismissal (using Form 16), by the *Statutory Powers Procedure Act*, and to such persons as the TLAB directs.

Rule 9.5 permits the TLAB, upon receiving written submissions, or if no written submissions are received, to dismiss the Appeal or make any other Order.

Upon reviewing the filed Notice of Motion and associated documents, I determined that it was not practical to cancel the scheduled Hearing to address the dismissal Motion. Therefore, I directed TLAB staff to advise the Parties and Participants to attend the Hearing at which time I would address the matter of the Notice of Motion.

Mr. Skeen, Mr. Dogan, and Jordan Vanderhoeven, a City of Toronto Zoning Examiner and a witness summoned by the Applicant, attended the Hearing on June 23, 2022. At the commencement of the Hearing, I apprised those in attendance of the situation and advised them of the TLAB's Rules relevant to the circumstances.

I advised the Parties that I intended to adjourn the Hearing in accordance with the TLAB's Rules and direct TLAB staff to canvas the Parties and Participant to attend an Oral 'virtual' Hearing to hear the Applicant's Motion to dismiss the Appeal without a Hearing.

This will allow the Appellant, Mr. Dogan, to respond to the Motion within the date provided for in the TLAB's Rules and will also then allow the Moving Party (Applicant) to reply to any new issues, facts or documents raised in response.

On the consent of the Parties in attendance, the Hearing was adjourned accordingly.

MATTERS IN ISSUE

There are no matters in issue. The Parties have agreed to the adjournment on consent and a Motion Hearing will be scheduled.

JURISDICTION

Under the TLAB's Rules of Practice and Procedure, above cited, I have the authority to adjourn the matter and to hear the Motion to dismiss the Appeal.

ANALYSIS, FINDINGS, REASONS

It is appropriate to adjourn the Hearing on the consent of the Parties and direct TLAB staff to schedule an Oral Motion Hearing.

On behalf of the TLAB, I would like to thank the Parties for their cooperation and apologize for the inconvenience they've experienced as a result of TLAB staff's delay in uploading the Motion materials filed by the Applicant.

ORDER

The Hearing scheduled for June 23, 2022, is adjourned and TLAB staff are directed to canvas the Parties and Participants for a date to attend an Oral Motion Hearing.

Once a date has been secured, TLAB staff will issue a Notice of Motion Hearing with the following due dates:

- If a Party needs to respond to the Motion, a Responding Party shall serve on all Parties and Participants a Notice of Response to Motion (Form 8) and file same with the TLAB at least seven (7) days before the date of the Oral Motion Hearing.
- If a Moving Party needs to respond to any new issues, facts, or documents raised in the Notice of Response to Motion, the Moving Party shall serve on all Parties and Participants a Notice of Reply to Response to Motion (Form 9) and file same with the TLAB at least four (4) days before the date of the Oral Motion Hearing.

The TLAB may be spoken to if issues arise.

X



Dino Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar