

# ORDER

**Decision Issue Date**          Tuesday, July 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): ISMATULLAH AMIRI

Applicant: ISMATULLAH AMIRI

Property Address/Description: 3176 WESTON ROAD

Committee of Adjustment Case File Number: 21 161711 WET 07 MV (A0311/21EYK)

TLAB Case File Number: 21 221592 S45 07 TLAB

**Hearing Date:**          Thursday, July 07, 2022

**Decision Delivered by:** TLAB Chair D. Lombardi

## REGISTERED PARTIES AND PARTICIPANTS

|               |                  |
|---------------|------------------|
| Appellant     | Ismatullah Amiri |
| Applicant     | Ismatullah Amiri |
| Primary Owner | Sunil Persad     |

## INTRODUCTION AND BACKGROUND

This matter relates to an appeal by Ismatullah Amiri (Applicant/Appellant) of a September 14, 2021, decision of the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) to refuse a variance that would permit the owner of 3176 Weston Road (subject property) to reduce the front yard soft landscaping requirement to 20%, whereas Zoning By-law 569-2013 requires a minimum of 75% of the front yard landscaping must be soft landscaping (Application).

**Decision of Toronto Local Appeal Body Panel Member: D. Lombardi  
TLAB Case File Number: 21 221592 S45 07 TLAB**

The Applicant appealed the matter to the Toronto Local Appeal Body (TLAB) on November 5, 2021, and the TLAB set a hearing date for July 7, 2022.

The only Parties in this matter are the Applicant/Appellant, Mr. Amiri, and Sunil Persad (Owner). As a result, only Mr. Amiri and Mr. Persad attended the 'virtual' Hearing on the return-to Hearing date on July 7<sup>th</sup>.

At the beginning of the Hearing, I advised the Parties that after monitoring the TLAB Application Information Centre (AIC) website, I was disappointed to see that the Applicant/Appellant had failed to submit or file any documents in support of the proposal and the variance sought.

I note that as the Applicant, Mr. Amiri attended the COA meeting at which the Application was heard and spoke on behalf of the owner. He is also the architect who prepared the Site Plan drawing that formed part of the COA file.

Mr. Amiri confirmed that he is the authorized representative for the Owner and apologized for being unfamiliar with the TLAB appeal process. He advised me that he had been out of the country for some time and did not have access to technology which prevented him from being able to file any supporting documentation to the TLAB in this matter.

It became clear that Mr. Amiri was unfamiliar with the TLAB appeal process and admitted this to the presiding Member. He acknowledged that he thought the materials submitted to the COA were sufficient for the TLAB appeal process.

While I understand that circumstances can impact a Party's ability to file relevant evidence in a timely manner, I admonished him for failing to submit any evidentiary materials that could assist the TLAB in adjudicating this matter.

## **MATTERS IN ISSUE AND JURISDICTION**

On a variance appeal, the matters in issue relate to the requested zoning by-law relief and the application of the policy and substantive 'four tests' set out in provincial enabling legislation, *the Planning Act (Act)*.

In the majority of cases, it is for the Applicant to address these provisions with opinion evidence, usually from a qualified professional that each variation from the By-law is supportable, individually and collectively. Expert testimony at the TLAB Hearing is an expectation, but not a necessity of the hearing process.

The failure to satisfactorily support any one variance can result in the dismissal of all. A TLAB Hearing is '*de novo*', meaning an onus lies with the Applicant to establish the basis for the requested relief as if no prior disposition had occurred. While the COA decision is relevant and is to be considered, it is in no way determinative of the appeal. I

reminded both the Applicant/Appellant and the Owner of this at the outset of the Hearing.

In this circumstance, the Applicant/Appellant has not submitted any documents or evidentiary materials to the TLAB, other than the Notice of Appeal (Form 1), to support the variance sought. At the Hearing, Mr. Amiri inquired as to whether the presiding Member would be supportive of adjourning the matter to allow the Owner additional time to prepare and file appropriate and relevant materials, such as an updated Site Plan and supporting arguments, as required by the TLAB and to reschedule the Hearing to a future date.

Under Rule 2.10 of the TLAB's Rules of Practice and Procedure (Rules), the TLAB is empowered to grant exceptions or other relief to the Rules as it considers appropriate, to enable it to effectively and completely adjudicate matters in a 'just, expeditious and cost-effective manner'.

TLAB Rule 23.2 states, "*A Party shall bring a Motion to seek an adjournment unless the adjournment is on consent in accordance with Rule 17.2.*"

Additionally, TLAB Rule 17.2 states, "*Where a Party has obtained from the TLAB an adjourn-to date and all Parties consent to an adjournment request and all Participants have been notified of the request, no Motion is necessary and the TLAB may issue a revised Notice of Hearing.*"

In this instance, there are no other Parties or Participants and both Messrs. Amiri and Persad concur that an adjournment of the Hearing is appropriate and would be welcomed. The issue, then, is whether to adjourn the matter to allow the Applicant/Appellant time to submit evidence in support of the Application.

## **ANALYSIS, FINDINGS, REASONS**

The absence of any supporting evidence related to an appeal can have one of two outcomes: a dismissal, or an adjournment.

Given that the Applicant/Appellant has been unable to file any documents in support of this application, I agreed that it would be appropriate to adjourn the matter to a later date as it was apparent that Mr. Amiri was not in a position to proceed in providing comprehensive evidence.

At this juncture, I reminded the Parties that the matter in question is to be conducted as a hearing *de novo* and the TLAB is not permitted to abandon its responsibilities to assess the Application under the applicable policy and statutory tests imposed by the *Act*.

Therefore, based on the foregoing, I find that it is not appropriate to make a final decision and order without a written record and in the absence of 'viva-voce' evidence

and that the only fair and sensible solution is to recess the Hearing to allow the additional, but limited, time necessary to present the case to the TLAB.

I take this decision to adjourn the Hearing seriously and make it reluctantly with the understanding that the TLAB Rules establish that the Tribunal is committed to fixed and definite hearing dates. Nevertheless, in the circumstances extant, I find that an adjournment would be the most reasonable and fair-minded approach to this situation.

## **DECISION AND ORDER**

The Hearing on July 7, 2022, regarding the above-referenced matter, is adjourned.

TLAB staff is directed to canvas the Parties for a 'return-to' Hearing date in September 2022. Once a Hearing date is confirmed, the TLAB will issue a new Notice of Hearing to reflect this new date.

The Applicant/Appellant is directed to file with the TLAB documents including an updated Site Plan drawing(s), a survey plan for the subject property, a revised list of the variance(s) being requested, a corresponding Zoning Examiner's Notice, an Authorized Representative Form 5, and any other supporting documentation, by no later than August 12, 2022.

The TLAB may be spoken to if difficulties arise in implementing this Order.

X 

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