

TELECONFERENCE SUMMARY/ DECISION AND ORDER

Decision Issue Date Thursday, July 21, 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): MOEZ KASSAM / MICHAEL GARDINER

Applicant: GOLDBERG GROUP

Property Address/Description: 43 RUSSELL HILL ROAD

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

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

Hearing date: Wednesday, July 20, 2022

DECISION DELIVERED BY TLAB Vice-Chair A. *Bassios*

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Moez Kassam
Appellant's Legal Rep.	David Bronskill
Appellant	Michael Gardiner
Appellant's Legal Rep.	Alan Heisey
Party	City of Toronto
Party's Legal Rep.	Derin Abimbola
Party's Legal Rep.	Jessica Jakubowski
Party	2170362 Ontario Inc. (5 Clarendon Crescent)

Party's Legal Rep.

Alan Heisey

INTRODUCTION AND BACKGROUND

Two Appeals are before the Toronto Local Appeal Body (TLAB) as a result of two separate applications to the Committee of Adjustment (COA) for 43 Russel Hill Rd (the subject property). The TLAB has consolidated the hearing of the Appeals and Hearing dates have been set down.

The Parties to this matter requested that a teleconference be convened in order to schedule and convene a mediation under the auspices of the TLAB. The Applicant has requested that the scheduled Hearing dates be preserved for the hearing of this matter in the event that the proposed mediation is not successful.

MATTERS IN ISSUE

The matters in issue in the teleconference were to consider the Parties' request for TLAB-led mediation, to identify the amount of time required, potential dates, and other procedural adjustments precipitated by a potential mediation process.

JURISDICTION

Section 20 of the TLAB Rules of Practice and Procedure set out the Rules for Mediation.

20. MEDIATION

Date by which Mediation shall be Held

20.1 No Mediation conducted by the TLAB shall be held later than 15 Days before the Hearing, unless the TLAB directs otherwise.

Mediation

20.2 Where the TLAB is satisfied there is good reason to believe one or more of the issues in dispute may be resolved through Mediation the TLAB may, on notice to any Participants, direct the Parties, and such other Persons as the TLAB may direct, using Form 17, to attend non-binding Mediation. Mediation shall be confidential.

20.3 The TLAB shall set the location, date and time of any Mediation to be conducted and direct how notice of the Mediation will be given to the Parties.

TLAB appoints Member as Mediator

- 20.4 If Mediation is to be conducted, the TLAB will appoint a mediator who is a Member of the TLAB and the mediator may make use of any appropriate dispute resolution techniques to assist the Parties in resolving some or all of the issues in dispute.

Member to Preside at Hearing with Parties' Consent

- 20.5 A Member who conducts a Mediation in which one or more of the issues have not been resolved may not preside over any Hearing relating to those unresolved issues unless all of the Parties consent and the Member agrees.

Mediation and Settlement Discussions Confidential

- 20.6 Any information or Documents provided or Exchanged during a Mediation and any discussions or exchanges relating to the resolution of issues or offers to settle are and shall remain confidential and shall not be disclosed by any Person or entered as evidence by any Person in the same or any other Proceeding. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into evidence in any Proceeding.
- 20.7 Nothing in Rule 20.6 affects the disclosure of the settlement terms and conditions that are proposed to be approved by the TLAB.
- 20.8 Nothing in Rule 20.6 affects the obligations of Parties and Participants to make disclosure as otherwise required by these Rules.
- 20.9 A Member who participates in Mediation is not competent or compellable in any proceeding to give evidence or produce Documents regarding the Mediation.

EVIDENCE

The Parties agreed to the following:

- Two days should be set aside for the mediation process.
- A gap of a few days between the days scheduled for mediation would be helpful for the Parties to prepare drawings, adjust design etc.
- In order to avoid delays and make the most of the mediation time that is to be dedicated to this matter, the persons who are empowered to make decisions (the clients) are to be in attendance. City staff will represent the City's position and if mediation is successful, will obtain appropriate authorization to settle the matter following the mediation.

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- In order to avoid delays and make the most of the mediation time that is to be dedicated to this matter, appropriate experts should be available to answer any questions or provide advice as many be desired.
- Four potential mediation dates were agreed to. (TLAB staff have confirmed with the Parties which two dates have been set down for mediation).
- The Parties agreed to delay submission dates that had been set for the submission of *Witness Statements*, *Response to Witness Statements*, and *Reply to Witness Statements* in the published *Notice of Hearing*. The agreed-to dates are reflected in the Decision below.

ANALYSIS, FINDINGS, REASONS

The TLAB encourages mediation as a means to resolve disputes. The seeking of a mediated settlement, however, involves the dedication of additional time and TLAB resources to reach a final resolution, bearing in mind that resolution is voluntary and should the mediation not be successful, a contested Hearing may still be required. Best efforts and a serious commitment to finding a solution are therefore incumbent on all involved.

The TLAB Rules state that no Mediation conducted by the TLAB shall be held later than 15 Days before the Hearing, unless the TLAB directs otherwise. As two of the potential mediation days agreed to by the Parties are within 15 days of the first day scheduled for a contested Hearing of this matter, direction will be necessary to meet the preferred schedule. The Parties have agreed to the dates, and so I shall waive the 15 day requirement.

The TLAB shall set the location, date and time of any Mediation to be conducted and direct how notice of the Mediation will be given to the Parties.

In order to encourage open discussion and collaboration, mediation discussions are strictly confidential. All Parties and Participants are reminded of TLAB Rules regarding confidential discussions.

DECISION AND ORDER

1. TLAB staff are directed to issue a *Notice of Mediation* for August 24, 2022 and August 29, 2022.
2. TLAB staff are directed to issue the following revised submission dates to all Parties and Participants:
 - **Witness Statement and Expert Witness Statement due no later than August 10, 2022;**

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- **Response to Witness Statement and Expert Witness Statement due no later than August 24, 2022;**
- **Reply to Response to Witness Statement and Expert Witness Statement due no later than August 30, 2022.**

Should difficulties arise regarding this Decision and Order, the TLAB may be spoken to.

X



A. Bassios
Panel Chair, Toronto Local Appeal Body