

INTERIM DECISION & ORDER WITH INSTRUCTIONS FOR PARTIES

Decision Issue Date Monday, July 04, 2022

PROCEEDINGS COMMENCED UNDER 45(12), subsection 45(1) of the Planning Act,
R.S.O. 1990, c. P.13, as amended

Appellant(s): CHRISTINA JONG

Applicant: ENZO LOCCISANO

Property Address/Description: 124 DEWBOURNE AVE

Committee of Adjustment Case File Number: 21 152162 STE 12 MV (A0613/21TEY)

TLAB Case File Number: **21 215231 S45 12 TLAB**

Hearing date: Tuesday, April 26, 2022

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant / Owner	CHRISTINA JONG
Appellant's Legal Rep	ENZO LOCCISANO
Applicant	ENZO LOCCISANO
Expert Witness	JASON PETRUNIA
Expert Witness	MARTIN RENDL
Expert Witness	PETER KUNTZ
Party (TLAB)	MARSHA KAZMAN
Party (TLAB)	CHARLES A LEFKOWITZ
Party (TLAB)	DENICE S FEIG

Party (TLAB)

DAVID HAGER

INTRODUCTION AND BACKGROUND

Christina Jong is the owner of 124 Dewbourne Ave., located in Ward 12 (Toronto- St. Paul's) of the City of Toronto. She applied to the Committee of Adjustment (COA) for the approval of variances to be able to construct a new two-storey detached dwelling with a rear deck and to widen the existing driveway. The COA heard the Application on September 1, 2021, and refused it in its entirety. The Applicant appealed the decision made by the COA to the Toronto Local Appeal Body (TLAB), which scheduled a Hearing on April 26, 2022.

David Hager, Marsha Kazman, Charles Lefkowitz, and Denice Feig, elected for Party Status. At the commencement of the Hearing on April 26, 2022, I was advised that the Applicant, and Parties Lefkowitz and Feig, had reached a Settlement, as a result of which they were no longer in opposition to the Appeal before the TLAB. I was advised that their lawyer, Ms. Koev, would attend the Hearing though, as an observer.

After opening statements from the Appellants, and Mr. Hager, a Party in opposition to the Appeal who represented himself, the planning witness for the Appellants, Mr. Martin Rendl was recognized as an Expert Witness in the discipline of land use planning, before commencing his evidence. After a few hours of giving evidence, Mr. Rendl experienced issues with his ability to connect to the Webex system- it was difficult to obtain video and audio simultaneously from Mr. Rendl. Mr. Helfand, Counsel for the Applicants, suggested that Mr. Rendl be allowed to provide evidence, with his video shut off, to enable him to conserve on his bandwidth, and proceed forward with the Hearing. Mr. Hager objected to evidence being obtained from the Witness, with his camera switched off, because he needed to "see the whites of his (i.e. the Witness') eyes". After a brief discussion, Mr. Helfand consented to an adjournment.

Before adjourning the Hearing, I informed the Parties that I would send out an "Interim Decision within two weeks" with instructions regarding submissions about questions, where more information was needed. Mr. Hager requested that it be sent out such that he would have a reasonable opportunity to respond to the questions, since he would be on vacation in mid-June 2022.

Unfortunately, due to work related reasons, I am sorry that I could not send out the Interim Decision within the stated time period. I decided that it would be best to send out this Interim Decision in late June 2022, in the hope that all Parties would be given the same opportunity to put their case forward, as stated in my email dated June 13, 2022, in response to the email sent out by the Applicants on June 6, 2022, enquiring about the status of the Interim Decision.

MATTERS IN ISSUE

The matter to be addressed by way of this Interim Decision is to issue instructions to the Parties about what questions need to be answered by the Parties, by way of submissions, before the Proceeding resumes later in 2022.

ANALYSIS, FINDINGS, REASONS

The purpose of this Interim Decision is to briefly discuss the circumstances under which the issue of “Sun and Shadow Studies” were referenced by the Parties and, ensure that Sun and Shadow Studies are updated in accordance with the City of Toronto’s guidelines, before the Proceeding can be resumed. These guidelines may be found at the following website, and are reproduced below:

<https://www.toronto.ca/city-government/planning-development/application-forms-fees/building-toronto-together-a-development-guide/application-support-material-terms-of-reference/>

A typical model will include all streets, blocks, parks and open spaces as well as buildings to a distance adequate to show the shadow impacts during requested times.

Modeling will have two parts, the first showing the existing situation and the second showing the proposed development in its context. The proposed development context should include other approved but not built buildings within the model area. These should be indicated graphically as different from the proposal and the built context.

Shadow diagrams should be plotted in colour to a standard metric scale and include a bar scale on each sheet labelled in 1,2,5,10,20, 100 and 200m increments. A reference base plan should also be plotted at a metric standard scale.

“As of right” or other site specific applicable shadow conditions should be indicated clearly by a contrasting colour single-line overlay with explanatory notation provided in a printed legend (i.e., red for “as of right” on the subject property, yellow for approved but not yet built adjacent development).

Given neither the Applicants, or the Opposition followed the guidelines in question, I emphasize that the Studies submitted by the Parties illustrate the diagrams corresponding to different times on separate pages, such that there are no more than two pictures per page. It is important that the drawings illustrate the scale in order to help me understand the better understand the impact of the proposal, and demonstrate the as-of-right shadow condition in a contrasting colour single-line overlay with explanatory notation, provided in a printed legend.

Secondly, the Applicants’ Witness Statement relies on a sample size of 104 decisions made by the COA, to determine the “prevailing” type in its discussion of Policy 4.1.5. I

would like to remind the Applicants that the “prevailing type” is to be determined on the basis of *all properties* (my emphasis) in the General Neighbourhood (GN), or the Immediate Context, when there is a perceptible difference between the General Neighbourhood, and Immediate Context. *Prima facie*, there is nothing before the TLAB to demonstrate that the sample of 104 properties on which the COA made decisions, is reflective of the entire corpus of houses in the GN. The Applicants need to either demonstrate that

- a) This sampling of 104 properties, reflects, from a statistical perspective, what can be seen in the larger community, such that the submitted table of COA decisions can stand-in, or represent the entire community.

OR

- b) Alternately, they can update their Witness Statements, to identify the “prevailing type” in the larger community, by counting the sum total of houses in the GN, and classify them on the basis of variables they deem appropriate. I emphasize the importance of the “counting exercise”, because it best operationalizes the concept of the “prevailing type”, as provided in the OP- namely, “*the most frequently occurring type*”.

The Parties are given time until **August 31, 2022**, to update their Shadow and Sun Studies, as discussed earlier. The Applicants are given time till **August 31, 2022**, to update their Witness Statements regarding the issues pertaining to the “prevailing type”, as discussed earlier in this Section. The Opposition may also make submissions on the question of “what is the prevailing type”, if they deem it appropriate, by August 31, 2022.

I note that the deadline of August 31, 2022, is assumed to be reasonable, and should allow sufficient time for the Parties to submit updated Statements, notwithstanding vacation plans for the summer, and other commitments. If there is an issue with the deadlines, the TLAB may be spoken to, recognizing that in the interests of transparency, all Parties have to be copied in any communication between the Party in question, and the TLAB.

INTERIM DECISION AND ORDER

1. The Parties may submit updated Sun and Shadow Studies, which rely on the City of Toronto’s guidelines, by August 31, 2022.
2. The Applicant may update their Witness Statement by August 31, 2022, such that the issue of “prevailing type” in Policy 4.1.5, is explored in more detail, on one of two ways:
 - A) The submitted sampling of 104 COA decisions, is reflective of the larger community, from a statistical perspective, such that it can serve as a proxy for

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the entire Geographic Neighbourhood, or Immediate Context, as the case may be

OR

- B) The Applicants can update their Witness Statements, to identify the “prevailing type” in the larger community, by counting the sum total of houses in the GN, and classify them on the basis of variables they deem appropriate.
3. The Opposition is given an opportunity to submit by August 31, 2022, any new information about what is the “prevailing type” in their preferred General Neighbourhood, or Immediate Context, and how it was determined.
 4. The TLAB will be in touch with the Parties to identify hearing dates in September 2022, to continue with the Proceeding.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body