

MOTION DECISION

Decision Issue Date Friday, August 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): MURAT DOGAN

Applicant: ANGUS SKENE

Property Address/Description: 339 WINDERMERE AVE

Committee of Adjustment Case File Number: 21 119898 STE 04 MV (A0222/21TEY)

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

Oral Motion Hearing date: Wednesday, July 13, 2022

DECISION DELIVERED BY TLAB Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANT

Appellant	MURAT DOGAN
Applicant/ Legal Rep.	ANGUS SKENE
Owner/ Party	SONG KIAT LEE
Participant	GOTHAM CHANDIDAS

INTRODUCTION AND BACKGROUND

This is a Motion brought by Angus Skene, the Applicant (Applicant/Motion Mover), and the authorized representative of the owner of 339 Windermere Avenue (subject property), requesting that the Toronto Local Appeal Body (TLAB) dismiss the Appeal brought by Murat Dogan (Appellant) without a Hearing.

Mr. Dogan appealed the decision of the City of Toronto (City) Committee of Adjustment (COA) conditionally approving variances to permit the alteration of the

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existing two-storey detached dwelling on the subject property 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.

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

The TLAB set a Hearing date for June 23, 2022, to hear the Appeal virtually.

The Motion was filed in accordance with Rule 17 of the TLAB's Rules of Practice and Procedure (Rules) promulgated after December 2, 2020.

In the Notice of Motion (Form 7) and associated Affidavit (Form10) filed on June 8, 2022, 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*. He specifically relies on 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; and*
- h) *The proceeding relates to matters which are outside the jurisdiction of the TLAB.*

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

- *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 the 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 Days 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.

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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), in accordance with 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.

Due to an administrative error, I was only made aware of the Notice of Motion request on the afternoon of Tuesday, June 21, 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.

As a result, I determined that it was not practical to cancel the scheduled Hearing to address the dismissal Motion and 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 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, I advised, would allow the Appellant to respond to the Motion within the date provided for in the TLAB's Rules and also then allow the Moving Party (Applicant) to reply to any new issues, facts or documents raised in response.

With the consent of the Parties in attendance, the Hearing was adjourned accordingly, and a new Oral Motion Hearing date was set for July 12, 2022.

On the 'return-to' Motion Hearing date, Mr. Skeen, Mr. Dogan, and Jordan Vanderhoeven, a City of Toronto Zoning Examiner and a witness summoned by the Applicant, again attended.

MATTERS IN ISSUE

Whether the Motion for Dismissal should succeed. If not, how should the TLAB set a new Hearing date and on what terms?

JURISDICTION

Under the TLAB's Rules of Practice and Procedure above cited, I have the authority to hear the Motion and to dismiss all or part of the proceeding without a Hearing on the grounds outlined under subrule 9.1 of the TLAB's Rules.

Additionally, Rule 9.3 states that where the TLAB proposes to dismiss all or part of an Appeal under Rule 9.1, it will give Notice of Proposed Dismissal, using Form 16, in accordance with the *Statutory Powers Procedure Act*, and to such other Persons as the TLAB directs.

EVIDENCE

At the Hearing, Mr. Dogan acknowledged that the only document he filed in this matter was a Notice of Appeal (Form 1) and that he was unaware that he was required to file any other documents with the TLAB.

He noted that the only reason he appealed the Application relates to his concern that the amount of soft landscaping in the rear yard being proposed by the Applicant will contribute to groundwater runoff onto his property. His concern related specifically to Variances 2 and 4 as requested by the Applicant, and how the numbers in those variances were calculated.

Mr. Dogan asserted that the Floor Space Index of 0.87 times the area of the lot proposed (198 m²) in Variance 2 combined with the minimum soft rear yard landscaping proposed in Variance 4 would actually result in only 5% of the rear yard of the subject property being maintained as soft landscaping as opposed to the 24% (11.4m²) figure proposed.

He asserted that these two variances combined "*create a major variance*" (Notice of Appeal, p. 4), in his opinion.

Conversely, Mr. Skene in his Notice of Motion, and his testimony at the Motion Hearing submitted that the reasons offered by Mr. Dogan and the associated methodology he utilized to arrive at the calculations for proposed rear yard soft landscaping reflect a lack of understanding of how the Zoning By-law works.

More importantly, he asserted that the reasons Mr. Dogan outlined in his Notice of Appeal do not disclose any land use planning issues.

Mr. Skene argued that the Appellant seems to believe that the 'numbers' proposed in the list of requested variances are numerical values created by the Applicant and have been "*...somehow subject to manipulation*" (Notice of Motion, p. 3, para. 7), by either the Applicant, the City, or both.

He also submits that Mr. Dogan believes that an alternative method of applying the Zoning By-law results in what the Appellant considers “*more correct numbers*” and then applies this methodology to arrive at the conclusion that “*...the numbers submitted by the applicant are incorrect, and/or misleading.*” (Notice of Appeal, p. 4)

He concludes that Mr. Dogan’s understanding of the Zoning By-law and the methodology employed in calculating the amount of soft landscaping in the rear yard that would result if the variances before the TLAB were granted “*...is wrong.*”

Furthermore, Mr. Skene suggests that the TLAB is not the venue to discuss and proposed alternate Zoning By-law application methods nor is the Tribunal in a position to “*...to ‘correct’ the by-law and its application by City of Toronto staff.*” (Notice of Motion, p. 3)

He asserts that for the reasons above cited, the Appeal should be dismissed without a Hearing under TLAB’s Rules 9.1 (a) and (h).

Jordan Vanderhoeven, a City Zoning Plans Examiner, attended the Motion Hearing by way of a Request to Summons (Form 11) filed by Mr. Skene. Mr. Vanderhoeven is the City official who conducted the Zoning By-law Review of the subject Application and he was summoned by Mr. Skene to appear before the TLAB because he is “*the person best suited to explain, clarify or counter the Appellant’s assertions.*” (Request to Summons, p. 2, para. 2)

I asked Mr. Vanderhoeven to provide a brief overview of the methodology used by a City Zoning Examiner in analyzing a variance application and to explain how the calculation for soft landscaping in the rear yard was determined in the Application before the TLAB. In doing so, he confirmed that the analysis to determine rear yard soft landscaping on the subject property utilized by Mr. Dogan was erroneous and that the rear yard is that portion of property measured from the rear wall of the proposed rear two-storey addition proposed by the Owner of 339 Windermere Ave. to the rear property line shared with Mr. Dogan’s property.

ANALYSIS, FINDINGS, REASONS

I agree with Mr. Skene that the reasons set out in the Notice of Appeal (Form 1) do not disclose any land use planning grounds upon which the TLAB could allow all or part of the Appeal.

Mr. Dogan clearly does not understand how the Zoning By-law works. His analysis of the by-law requirements for the rear yard soft landscaping in this matter is erroneous and his assertion that an alternative methodology of applying the Zoning By-law is needed in this particular matter is not correct.

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The numbers cited in each of the variances requested by the Applicant are the product of a sophisticated application of the Zoning By-law by experienced and trained professional staff at the City of Toronto Building Department.

I also agree with Mr. Skene that the TLAB is not the venue to propose alternate Zoning By-law application methods nor is the TLAB in a position or properly constituted to 'correct' the By-law and its application by City staff. This is a matter which is outside the jurisdiction of the TLAB.

For the reasons cited above, and under Rule 9.1 of the TLAB's Rules, I am dismissing the Appeal without a Hearing on the grounds 9.1 a) and h) as established by the Motion Mover.

DECISION AND ORDER

The Appeal in the subject matter is dismissed without a Hearing. Pursuant to Rule 9.3 of the TLAB's Rules, TLAB staff is directed to give Notice of Dismissal, using Form 16, per the *Statutory Powers Procedure Act*, to those Persons in attendance at the Oral Motion Hearing.

As per Rule 9.4 of the TLAB's Rules, those wishing to make written submissions on the proposed Dismissal must do so within 10 Days of the giving of Notice of Dismissal under Rule 9.3.

X



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