

MOTION DECISION AND ORDER

Decision Issue Date: Tuesday, August 23, 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): WEN LE

Applicant: PROJEKT STUDIO ARCHITECTS

Property Address/Description: 108 ALBERTUS AVE

Committee of Adjustment Case File Number: 20 116500 NNY 08 MV (A0138/20NY)

TLAB Case File Number: 21 116616 S45 08 TLAB

Hearing date: Thursday, October 06, 2022

DECISION DELIVERED BY Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

Owner	STEFAN ANDREAS SOLYOM
Applicant	PROJEKT STUDIO ARCHITECTS
Appellant	WEN LE
Party (TLAB)	CATHERINE MANOUKIAN
Party's Legal Rep.	DAVID BRONSKILL
Participant	WENDY ORBACH
Expert Witness	JANE MCFARLANE
Expert Witness	MICHAEL BARTON

INTRODUCTION AND CONTEXT

This Decision arises from a Motion brought before the Toronto Local Appeal Body (the “Tribunal”) by Wen Le, the Appellant in this matter. The Motion has two branches. The first branch seeks an adjournment of the hearing presently scheduled for October 6, 2022 to a date to be fixed after consultation with the Parties and the Tribunal. The second branch seeks an Order of the Tribunal directing disclosure by the Owners/Applicant as to certain floor area information regarding the building proposal.

THE LEGISLATIVE AND POLICY FRAMEWORK

Tribunal Rule 23 of the Tribunal’s *Rules of Practice and Procedure* regarding requests for adjournments, and Tribunal Rule 16 of the Tribunal’s *Rules of Practice and Procedure* regarding requests for disclosure.

SUMMARY OF EVIDENCE

The Motion by the Appellant was supported by an affidavit deposed by the Appellant. The affidavit asserts that the land use planning consultant retained by the Appellant, Michael Barton, has a conflict that will prevent him from appearing for this appeal hearing on the presently scheduled date due to a previously committed obligation for him to appear before the Ontario Land Tribunal in an appeal hearing before that body on that date.

A Response to Motion was filed by counsel for the Owners, David Bronskill, which indicated that the Owners, on the strength of the ground advanced, would consent to an adjournment and the fixing of a new hearing date.

With respect to the second branch of the Motion, the affidavit says that there is a discrepancy between the FSI relief sought from the Committee of Adjustment and the floor area which is shown on the filed plans.

Mr. Bronskill responds by saying that the plans before the Tribunal show a requested variance for a floor space index of 0.80. Therefore, there are no “deficiencies” on the plans requiring further disclosure. He furthermore asserts that as there will be a new Notice of Hearing, which will specify dates for applicant disclosure and the filing of witness statements, if there is to be any modification it would arise through applicant disclosure and the Appellant will have the usual period of time to review and react for the purpose of filing evidence.

The Appellant filed a Reply wherein she underlined that she would require at least two weeks from Applicant disclosure to filing of witness statements in order to respond to anything that arose from that disclosure.

As there will be a fresh Notice of Hearing and as the usual period between the date of Applicant disclosure and the filing of witness statements is well in excess of two

weeks, there should be ample time for the Appellant and her expert to prepare a complete and current witness statement.

CONCLUSION

Rule 23.3 of the *Rules* authorizes the Tribunal on requests for adjournment to consider the reasons for the adjournment and the position of the other parties on the request. Rule 17.2 anticipates adjournment requests on consent of the other parties. As there is a legitimate ground for adjournment due to the witness conflict and as the other Party consents, the Tribunal will grant the request for adjournment with the rescheduled date for the hearing to be fixed by the Tribunal after input from the Parties as to available dates.

Rule 16.1(c) of the *Rules* does authorize the Tribunal, at any stage of a proceeding, to order the provision of particulars. In this instance, and as there will be a fresh Notice of Hearing with the usual specified action dates, the Tribunal finds the position of the Owners compelling. It is premature to make an order of disclosure.

DECISION AND ORDER

On the basis of the foregoing, the Tribunal Orders that the first branch of the Motion is allowed and the hearing date will be rescheduled by the Tribunal in consultation with the Parties. The Tribunal Orders that the second branch of the Motion is dismissed.



X

G. Swinkin
Panel Chair, Toronto Local Appeal Body