

# MOTION DECISION AND ORDER

**Decision Issue Date** Thursday, August 11, 2022

PROCEEDINGS 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): PETER CHAN

Applicant: CHENG ZHANG

Property Address/Description: 58 ARDWOLD GATE

Committee of Adjustment Case File Number: 22 116616 STE 12 MV (A0251/22TEY)

TLAB Case File Number: 22 156546 S45 12 TLAB

**Motion Hearing date:** Wednesday, August 10, 2022

**DECISION DELIVERED BY** Panel Member G. Swinkin

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	PETER CHAN
Applicant	CHENG ZHANG
Party	JING ANNIE HUANG
Party's Legal Rep.	MARTIN MAZIERSKI

## INTRODUCTION AND CONTEXT

Jing (Annie) Huang and Christopher Moeller are the owners (the "Owners") of the property at 58 Ardwold Gate (the "Property").

The Owners engaged an architectural firm to prepare plans for various additions to the Property. Those plans were prepared and it was determined that the proposed construction would not comply with various requirements of the applicable Zoning By-law. The Owners authorized the architectural firm to make application to the Committee of Adjustment (the "Committee") for variance relief. A principal of that firm, Cheng

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Zhang, signed the application as agent for the Owners. Another member of the architectural firm, Rachel Wang, presented the application to the Committee.

The Committee approved the application and authorized the requested variances at its hearing on May 25, 2022.

Apparently, a couple of days later, the Owners informed Ms. Wang that they would not be using her firm's services to undertake and execute the construction project.

On June 3, 2022, an appeal was filed with the Committee Secretary by Peter Chan against that decision. On the face of the notice of appeal, it declares that Mr. Chan's address for service is at 6 Pickett Crescent in Richmond Hill. Furthermore, apart from reciting the relief which was granted by the Committee, there were no grounds for the appeal appearing in the Notice of Appeal.

The appeal is to be heard by the Toronto Local Appeal Body (the "Tribunal").

The Tribunal has had filed with it a Notice of Motion on behalf of the Owners seeking dismissal of the appeal without a full hearing by reason that the appeal states no reasons for appeal, and is frivolous, vexatious or not made in good faith on the basis that the Appellant is just a proxy for the architectural firm and this step is just retribution for the termination of the professional relationship

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

Subsection 45(17) of the *Planning Act* authorizes the dismissal of appeals for various enumerated reasons. Rule 9.1 of the Tribunal's *Rules of Practice and Procedure* mirrors the said *Planning Act* provisions.

Those grounds include that the Appellant has not provided written reasons and grounds for the Appeal, and that the appeal is frivolous, vexatious or not commenced in good faith (clauses (e) and (b) of Rule 9.1 and clauses (b) and (a)(ii) of Subsection 45(17) of the *Planning Act*).

## **SUMMARY OF EVIDENCE**

The Motion was supported by the affidavit of Jing (Annie) Huang. The legal representative for the moving Party has affirmed service on the Appellant. No Notice of Response has been filed by the Appellant. Therefore, the only evidence before the Tribunal is as is set out in the Motion Record.

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Firstly, as is properly asserted in the Notice of Motion, the Notice of Appeal on its face merely recites the relief granted by the Committee. This does not constitute reasons or grounds for appeal.

On the secondary ground for the Motion, the affidavit sets out title search information and other research conducted by or on behalf of the Owners. That research discloses that the address for service used by Peter Chan on the Notice of Appeal, 6 Pickett Crescent, Richmond Hill, is to a property which is registered to 10186791 Canada Inc. The registered address for that corporation in its corporate information filings is 141 Chartland Blvd. S., Scarborough, Ontario. One of the registered owners of that property is Shan Wang (also known as Rachel Wang).

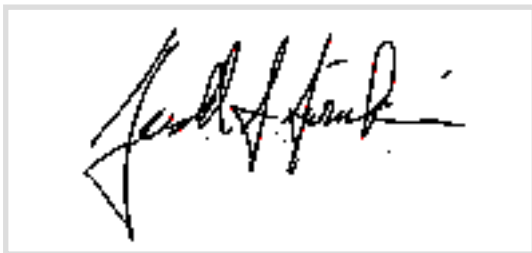
From this information, the Owners surmise that Peter Chan, as he otherwise does not live proximate to the Property and had not previously disclosed himself nor expressed any comment prior to or at the Committee, has been persuaded by Ms. Wang to file the Notice of Appeal, and that the appeal therefore has not been filed in good faith and can fairly be characterized as frivolous and vexatious.

## **CONCLUSION**

The Tribunal is satisfied, based upon the evidence and submissions contained in the Motion record, and upon the authority available to it, that there are fully made out grounds for the dismissal of this appeal without a full hearing due to an absence of reasons set forth in the Notice of Appeal and based upon the apparent lack of good faith in the filing of the appeal and its vexatiousness.

## **DECISION AND ORDER**

The Tribunal therefore Orders the dismissal of the appeal by Peter Chan with respect to the Committee decision of approval regarding 58 Ardworld Gate.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'G. Swinkin'.

X

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G. Swinkin  
Panel Chair, Toronto Local Appeal Body