

# FINAL DECISION & ORDER

**Decision Issue Date**      Wednesday, September 21, 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:**      Wednesday, September 14, 2022

**DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant / Owner	CHRISTINA JONG
Appellant's Legal Rep	MATHEW HELFAND
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. The highlights of the Hearing that took place on April 26, 2022, and the reasons why the Hearing had to be adjourned half way through the day are discussed in my Interim Decision dated July 4, 2022.

As a result of the aforementioned Interim Decision, the Parties were asked to make extra submissions in support of their positions- I acknowledge the effort put in by both Parties to respond to my request for extra information in the form of submissions made to the TLAB, on August 31, 2022.

At the commencement of the Hearing on September 24, 2022, Mr. Mathew Helfand, Counsel for the Applicants, drew my attention to a letter sent to the TLAB late on September 23, 2022, stating that the Applicants (also the Appellants in this Appeal), wanted to withdraw their Application. He asked that the TLAB to acknowledge the withdrawal of the Appeal, in its Final Order, and close the file, without making any finding that would impede the ability of the Applicants to reopen the file, if necessary, before the Committee of Adjustment.

I observed that from a jurisdictional perspective, the TLAB did not have the power to prevent a future application, regarding the Subject Property to the Committee of Adjustment, by the Applicant. I thanked Mr. Helfand for the information, and asked the Parties in opposition if they had any comments, or information for me.

Ms. Koev, Counsel for Party Lefkowitz, stated that she was "surprised" by the request from the Applicants to withdraw the Appeal, because there had been no discussion with herself, nor prior intimation, about the withdrawal of the Appeal. She narrated how the letter withdrawing the Appeal, alluded to earlier by Mr. Helfand, had reached her office, "after hours, the previous day" (i.e. September 13, 2022). Ms. Koev stated that she had not had a "chance to speak to" her clients, since the letter for withdrawal had been received, and asked that the TLAB not "close the file immediately", but "wait 30 days from the day of the Hearing" to close the file. She stated that she would need to obtain instructions from her clients, regarding the Applicant's desire to withdraw the Appeal, and expanded on her request by referring to Rules of Civil Procedure, in the context of Courts, where leave of the Court was required, unless the Withdrawal of the Appeal, was by mutual consent. She spoke to how Parties could put forward a Motion to ask that the Final Order state that the Appellants not be allowed to bring back the matter to

the Court, in order to “not prejudice the Parties who were in opposition to the original Appeal”.

Mr. Hager reiterated his intention to file a Motion for costs, as stated on the first day of the Hearing, and asked that the Final Decision and Order also state that I be seized as the Member hearing the Motion for Costs.

I observed that under the TLAB Rules, the Parties have up to thirty days, after the TLAB releases its final Decision on any Appeal, to file a Motion for costs- in other words, it is not necessary for a file to be open for a Motion for Costs to be filed. I also informed Mr. Hager that under the TLAB Rules, the Member who heard a particular matter, would automatically hear any Motion for Costs. I also stated that notwithstanding this, I could ensure that the final Order included a component stating that I was seized for a Motion for Costs the Parties brought forward such a Motion, “ for the peace of the mind of the Requestor”, unless there was a specific objection from any of the Parties.

It may be noted that there was no objection to Mr. Hager’s request about the Order stating that the Adjudicator would be seized to make a decision about the Motion for Costs, if such a Motion were filed.

I also stated that I would grant two days to Ms. Koev, until the end of the day on September 16, 2022 (Friday) so that she could contact her clients, obtain any instructions that she needed from them, and communicate the same to the TLAB, so that I could make a decision about the issuance of the Final Decision, and Order, as well as the closure of the file respecting 124 Dewbourne Ave.

## **MATTERS IN ISSUE**

The following matters arise out of the Hearing:

- 1) Should the TLAB make a specific finding about the merits of the case when issuing a Final Order that would impact the ability of the Applicant to start a fresh application before the Committee of Adjustment
- 2) Should the TLAB wait for 30 days after the Applicant has withdrawn their Application to make a final Decision and Order?
- 3) Is it necessary for the Final Order to state that the Member who heard the case be seized to make any decision on the Motion for Costs put forward by any of the Parties?

## **ANALYSIS, FINDINGS, REASONS**

It is important to note that the second question listed above, is answered last in this Section, because the answer to the third question listed above, informs the answer to the second question:

***Question 1 ) Should the TLAB make a specific finding about the merits of the case, when issuing a Final Order that would impact the ability of the Applicant to start a fresh application before the Committee of Adjustment***

When the TLAB closes a file, as a result of the Appellant withdrawing their Appeal, it is evident that the evidence (even if it has been heard) has not been analyzed for the purpose of arriving at the Final Decision. As a result, the Tribunal cannot make a finding regarding the planning merits in the Appeal/Application. Consequently, there is no basis for the TLAB to make a recommendation to the COA, or any other Tribunal, regarding the re-opening of the Application, on the basis of its planning merits.

It is also important to note that a request by the Appellants to withdraw an Appeal, automatically results in a confirmation of the decision made by the Committee of Adjustment on the Application.

I note the discussion with the Parties in opposition to the Appeal about why a file may be kept open, after the Appellants have decided to withdraw their Appeal. However, the lack of subsequent submissions on this matter, as requested at the Hearing, results in the reinforcement of my perspective, as stated above, on the matter of the contents of a Final Order, when the Appeal has been withdrawn by the Appellant.

***Question 3) Is it necessary for Final Order to state that the Member who heard the case be seized to make any decision on the Motion for Costs put forward by any of the Parties?***

It is important to reproduce Rules Section 28- "Costs" from the TLAB's Rules of Practice and Procedure (the "Rules")

***Who May Request an order for Costs***

*28.1 Only a Party or a Person who has brought a Motion in the Proceeding may seek an award of costs.*

*28.2 A request for costs may be made at any stage in a Proceeding but in all cases shall be made no later than 30 Days after a written decision is issued by the TLAB.*

***Member Seized to Consider Costs Order***

*28.3 The Member who conducts or conducted the Proceeding in which a request for costs is made shall make the decision regarding costs.*

Rule 28.3, recited above, states explicitly that the Member who conducted the Proceeding shall make the decision regarding costs. This corresponds directly to the Order requested by the Party, which expressed an intention to file a Motion for costs.

Consequently, there is no need to make a specific finding on the issue of who will hear the Motion for Costs, should one be filed.

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I herewith clarify the process that Parties need to complete, should they choose to file a Motion for Costs, which is consistent with Section 28- Costs, in the TLAB's Rules.

The Motion for Costs, with supporting material, needs to be filed by the Requestor within 30 days of this Final Decision being issued, and served on other Parties. Should such a Motion be filed, the following deadlines may be adhered to for the Response and Reply:

- The Response from other Parties, along with supporting material, may be filed with the TLAB, and served on all Parties, including the Moving Party, within 10 days of the filing of the original Motion for Costs.
- Any Reply from the Moving Party, needs to be filed within 5 days of the filing of the Response, if there is one. The Reply needs to confine itself to new issues, facts and not merely repeat/reiterate what was stated in the original Notice of Motion.

Given the discussion that took place at the Hearing completed on September 14, 2022, regarding the filing of Motions, my well-meaning advice to the Parties, is to not rely on Section 17-Motions, of the TLAB's Rules, but to rely instead on Section 28-Costs, because a Motion for Costs is different from other Motions filed before/during a Proceeding.

***Question 2) Should the TLAB wait for 30 days after the Applicant has withdrawn their Application to close the file, or should it do so as soon as the Final Order and Decision is issued?***

The TLAB treats the request from one of the Parties, made verbally during the Hearing completed on September 14, 2022, to keep the file open for 30 days after the issuance of this Decision, as a Motion, and asked the Parties to make any submissions in support, or in opposition to this Motion, within two working days, after the completion of the Hearing.

While the Rules don't provide any direction regarding how long the TLAB needs to wait before, or after issuing a Final Order acknowledging the withdrawal of the Application, to close the file, the TLAB has, ***in practice*** ( my emphasis), has closed files, as soon as the Final Decision and Order is issued. Given that this approach is the result of practice, I gave Counsel putting forward this Motion two days to put forward any other material in support of their request, and/or obtain instructions from their clients.

The TLAB Staff advise me that as of the end of day on September 19, 2022, no information had been obtained from the Parties to support, or oppose the Motion to keep the file open for 30 days, after the completion of the Hraring. In the absence of any new information in support of the Motion to keep the file open for 30 days, the Motion is refused, and the TLAB File respecting the Appeal for 124 Dewbourne will be closed, after this Final Decision and Order is issued.

## FINAL DECISION AND ORDER

1. The TLAB acknowledges the communication from the Applicants regarding their withdrawal of the Appeal/Application respecting 124 Dewbourne Avenue, and closes the corresponding TLAB File (21 215231 S45 12 TLAB), with the issuance of this Final Decision and Order.

This decision is made without any reference to the planning merits of the Application.

2. The decision made by the Committee of Adjustment, dated September 1, 2021, refusing the request for the approval of variances at 124 Dewbourne Avenue, is now final and binding.
3. The Motion to keep the TLAB File respecting 124 Dewbourne for 30 days, after the Appellants communicated their desire to withdraw the Appeal, is refused in the absence of submissions from the Parties who put forward the Motion.
4. Should any Party file a Motion for Costs, with accompanying material, within the 30 day deadline that begins with the date of the issuance of this Decision, as stipulated by the TLAB's Rules, other Parties will be allowed 10 days, to file a Response, along with accompanying material. The Moving Party will then be given 5 days from the time the Response was filed to complete their Reply.

So orders the Toronto Local Appeal Body

X



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body