

# DECISION AND ORDER

**Decision Issue Date**      Thursday, September 15, 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(s): ANGUS SKENE

Property Address/Description: 339 WINDERMERE AVE

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

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

**Hearing date:** Tuesday, July 12, 2022

**DECISION DELIVERED BY TLAB Chair D. Lombardi**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	MURAT DOGAN
Applicant / Party Representative	ANGUS SKENE
Owner / Party	SONG KIAT LEE
Participant	GOTHAM CHANDIDAS

## INTRODUCTION AND CONTEXT

On June 8, 2022, Angus Skene, the Applicant and authorized representative of Song Kiat Lee (Owner), filed a Motion with the Toronto Local Appeal Body (TLAB) on behalf of the owner of 339 Windermere Avenue (subject property), requesting the TLAB dismiss the Appeal brought by Murat Dogan (Appellant) without a Hearing.

**Decision of Toronto Local Appeal Body Panel Member: Chair D. Lombardi**  
**TLAB Case File Number: 22 100277 S45 04 TLAB**

Mr. Dogan had appealed the December 8, 2021, decision of the City of Toronto (City) Committee of Adjustment (COA) conditionally approving variances to permit the alteration of the 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 (Application).

The Applicant also proposed creating two tandem parking spaces in the rear yard that are to be accessed from the side yard (Mayfield Avenue).

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 (Form 10) filed on June 8, 2022, Mr. Skene submitted that the Appeal should be dismissed on the grounds outlined in Rule 9 of the TLAB's Rules, under the heading *Adjudicative Screening*.

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.

He specifically relies on Rules 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.*

Additionally, 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), under 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.

At the Oral Motion Hearing on July 12, 2022, Mr. Skene, Mr. Dogan, and Jordan Vanderhoeven, a City of Toronto Zoning Plans Examiner and a witness summoned by the Applicant, attended and I heard testimony from each.

In a decision and order dated August 12, 2022, I agreed with Mr. Skene that the reasons set out in the Notice of Appeal (Form 1) filed by the Appellant do not disclose any land use planning grounds upon which the TLAB could allow all or part of the Appeal.

I found that Mr. Dogan did not understand how the Zoning By-law works. I concurred with Mr. Skene that the Appellant's analysis of the by-law requirements for the rear yard soft landscaping in this matter and his assertion that an alternative methodology of applying the Zoning By-law should have been applied by the City of Toronto Building Department in this particular matter were incorrect.

I also agreed 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, I determined, is a matter which is outside the jurisdiction of the TLAB.

For the reasons cited in that Decision and Order, and under Rule 9.1 of the TLAB's Rules, I dismissed the Appeal without a Hearing on the grounds in 9.1 a) and h) of the TLAB's Rules as established by the Motion Mover.

Additionally, I ordered TLAB staff to give Notice of Dismissal, using Form 16, as per the Statutory Powers Procedure Act, to those Persons in attendance at the Oral Motion Hearing.

In doing so, TLAB staff advised those Persons wishing to make written submissions on the proposed Dismissal were to do so within 10 Days of the giving of the Notice of Dismissal, as per Rule 9.4 of the TLAB's Rules.

No Persons filed submissions with the TLAB on the proposed Dismissal by the requisite due date cited above.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

As mentioned, TLAB Rule 9.1 a) permits the dismissal of the appeal without holding a Hearing. This authorizes the TLAB to dismiss a proceeding without a Hearing if the reasons set out in the Appeal do not disclose any apparent land use planning ground upon which the TLAB could allow the Appeal.

If this Rule is accepted as applicable, then it relieves other parties from having to prepare for an oral Hearing where there is no statutory basis for the appeal.

Furthermore, Rule 9.5 of the TLAB's Rules states that:

*"...if no written submissions are received in accordance with Rule 9.4 (above recited) the Local Appeal Body may dismiss the Appeal or make any other order."*

## CONCLUSION

The TLAB issued a Motion Decision and Order on August 12, 2022, that dismissed the subject matter without a Hearing pursuant to the TLAB's Rules and directed that TLAB staff issue a Notice of Dismissal.

In doing so, the TLAB advised that all Parties that any Persons wishing to make written submissions on the proposed Dismissal do so within 10 days of the giving of that Notice as per Rule 9.3, with the understanding that the Appeal would be dismissed if no such submissions were filed with the TLAB.

As noted previously in this Decision, no written submissions were received by the TLAB.

In summary, on the arguments presented in the Motion to Dismiss, I find them to be persuasive in that there is no land use planning basis upon which the Appeal could be allowed.

Therefore, I find that the Motion succeeds and that the Appeal is dismissed without a Hearing.

## DECISION AND ORDER

The Appeal in this matter is dismissed without a Hearing.

The Committee of Adjustment decision dated December 8, 2021, is final and binding, and the file of the Toronto Local Appeal Body is closed. No further attendance or submissions are required.

X



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D. Lombardi  
Panel Chair, Toronto Local Appeal Body  
Signed by: dlombar