

DECISION AND ORDER

Decision Issue Date Monday, September 19, 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): SHARON KAMIEL

Applicant: BRYAN HACKETT

Property Address/Description: 147 B BEDFORD PARK AVENUE

Committee of Adjustment Case File Number: 19 243336 NNY 08 MV
(A0697/19NY)

TLAB Case File Number: 20 111935 S45 08 TLAB

Hearing date: Thursday, October 27, 2022

DECISION DELIVERED BY TLAB Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Sharon Kamiel
Appellant's Legal Rep	Jonathan Minnes
Applicant	Bryan Hackett

INTRODUCTION AND CONTEXT

This matter relates to an Appeal by Sharon Kamiel (Appellant) of the January 16, 2020, decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing a variance to permit the owner of 147B Bedford Park Avenue (subject property) to legalize and maintain the existing front yard parking space (Application).

The harmonized City Zoning By-law 569-2013 states that a parking space may not be located in a front yard or a side yard abutting a street.

The subject property is a semi-detached residential dwelling. Prior to the construction of 147A and 147B Bedford Park Avenue, which are attached, and each has a front yard parking space, the original lot contained a two-storey single detached dwelling and a front yard parking space. The Appellant used her parking space since 2015 when she purchased the property. The dwelling attached to the Appellant's dwelling had front yard parking which was used as well. After the Appellant used the parking space for approximately four years, the City issued a Notice of Violation respecting the pad.

Following the COA's refusal of the Application, the Appellant appealed the matter to the Toronto Local Appeal Body (TLAB) on February 3, 2020, and the TLAB set a Hearing date for June 23, 2021.

The Appellant was the only Party to elect status and to attend the Hearing. There were also no Participants, or neighbours who attended the Hearing.

In a Final Decision and Order (Decision) issued by TLAB, dated July 15, 2021, Member Yao dismissed the appeal and confirmed the decision of the COA to refuse the variance. The Appellant subsequently filed a Review Request of the Decision with the TLAB.

The Review Request was conducted pursuant to Rule 31 of the TLAB's Rules of Practice and Procedure (Rules), promulgated after December 2, 2020. The TLAB Member who conducted the Review Request was designated to do so under Rule 31.2 of the Rules and did so in accordance with the Rules, above cited.

The Member subsequently issued a Review Request Order (Order) on July 15, 2022, cancelling the July 15, 2021, Decision, allowing the Appeal, and ordering a new '*de novo*' oral Hearing of the Appeal before a different TLAB Member. The TLAB set a Hearing date for October 27, 2022, to hear the '*de novo*' matter.

However, on July 19, 2022, Jonathan Minnes (Gowling WLG) the Appellant's legal representative advised the TLAB by email that he had booked an out-of-country trip prior to the release of the Review Request Order which would prevent him from being able to attend the Hearing.

Mr. Minnes noted the Appellant as the only Party to this Appeal and that no other Parties or Participants elected status or attended the Hearing in the first instance. As a result, and given that he anticipated that the Hearing in this matter would only require one day, he requested that the TLAB reschedule the Hearing.

Furthermore, Mr. Minnes advised that he and the Appellant's expert planning witness (Ms. Heron-Monk), who were the only persons who attended the June 23, 2021, Hearing, were generally available in November and December of 2022, for a rescheduled Hearing.

In response, the TLAB advised Mr. Minnes that since the matter had been scheduled as a 'de novo' Hearing, the Tribunal could only consider the request to adjourn the matter and reschedule the Hearing once the deadline for the election of Party or Participant status had passed, on August 17, 2022, pursuant to TLAB Rule 17.2.

On August 25, 2022, Mr. Minnes wrote to the TLAB that since no Parties elected Party Status by the deadline date outlined in the Notice of Hearing and given that the Appellant is the only Party to the Appeal, his client was requesting an adjournment of the matter.

THE LEGISLATIVE AND POLICY FRAMEWORK

Under the TLAB's Rules of Practice and Procedure (Rules), and particularly Rules 2.2, 17.2, and 23.2, a Hearing can be adjourned to a rescheduled date.

More specifically, Rule 2.2 permits the TLAB to liberally interpret the Rules to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

Additionally, Rule 23.2 allows the presiding Member to adjourn a scheduled Hearing on the consent of the Parties and with service to all, without the need for the filing of a Motion to seek an adjournment, in accordance with Rule 17.2.

SUMMARY OF EVIDENCE

Mr. Minnes' email was filed with the TLAB immediately following notification from the Tribunal of the issuance of the Review Request decision directing that a new oral Hearing be ordered before a different Member.

On being advised by the TLAB that the request for an adjournment was premature pending the due date for the election of Party or Participant status, Mr. Minnes agreed to wait until that date had passed.

Following that due date, and with the understanding that no Parties had elected Party status in the matter, Mr. Minnes formally requested an adjournment under Rule 17.2 in a subsequent email dated August 25, 2022.

ISSUES, ANALYSIS AND CONCLUSION

There are no other Parties or Participants in this proceeding. The issue, then, is whether to adjourn the matter as requested to allow the Appellant's solicitor to be in attendance at the Hearing.

Decision of Toronto Local Appeal Body Panel Member: D. Lombardi
TLAB Case File Number: 20 111935 S45 08 TLAB

The new 'de novo' Hearing is the result of direction from a Review Request decision issued on July 15, 2022. The Appellant's solicitor is unable to attend the scheduled Hearing in this matter because of a previously scheduled commitment.

Immediately upon being notified by the TLAB of that decision, Mr. Minnes contacted the Tribunal to advise that he was unavailable to attend the Hearing on October 27, 2022. He also waited until the due date to elect Party status had passed before formally requesting the adjournment.

Therefore, given the circumstances, I find that an adjournment would be the most reasonable and fair-minded approach to this situation.

Rule 23.3 provides the presiding Member with the guidelines to be considered in deciding whether to grant an adjournment. On the basis that there are no other Parties or Participants in this matter and that I see no prejudice or hardship as a result of rescheduling the Hearing date, I am prepared to adjourn the matter to a date on which Mr. Minnes, the Appellant and the Appellant's expert planning witness are available.

Mr. Minnes has confirmed that he and the Appellant, as well as their planning witness, are available between November 28 and December 23, 2022.

DECISION AND ORDER

The Hearing on October 27, 2022, regarding the above-referenced matter, is adjourned.

TLAB staff will canvas for a new Hearing date within the calendar parameters provided by the Appellant's solicitor and above cited.

Once a Hearing date has been confirmed, TLAB staff will issue a new Notice of Hearing to reflect the rescheduled date. All previous submission and filing dates will remain as before.

The TLAB may be spoken to if difficulties arise in implementing this Decision and Order.

X



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