

DECISION AND ORDER

Decision Issue Date Tuesday, September 13, 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): ISMATULLAH AMIRI

Applicant: ISMATULLAH AMIRI

Property Address/Description: 3176 WESTON ROAD

Committee of Adjustment Case File Number: 21 161711 WET 07 MV (A0311/21EYK)

TLAB Case File Number: 21 221592 S45 07 TLAB

Hearing Date: Thursday, September 08, 2022

Decision Delivered by: TLAB Chair D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Ismatullah Amiri
Applicant	Ismatullah Amiri
Primary Owner	Sunil Persad

INTRODUCTION AND BACKGROUND

This matter relates to an appeal by Ismatullah Amiri (Applicant/Appellant) of a September 14, 2021, decision of the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) to refuse a variance that would permit the owner of 3176 Weston Road (subject property) to reduce the front yard soft landscaping requirement to 20%, whereas Zoning By-law 569-2013 requires a minimum of 75% of the front yard landscaping must be soft landscaping (Application).

The Applicant appealed the matter to the Toronto Local Appeal Body (TLAB) on November 5, 2021, and the TLAB set a hearing date for July 7, 2022.

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The only Parties in this matter are the Applicant/Appellant, Mr. Amiri, and Sunil Persad (Owner). As a result, only Mr. Amiri and Mr. Persad attended the 'virtual' Hearing on the return-to Hearing date on July 7th.

At the beginning of the Hearing, I advised the Parties that after monitoring the TLAB Application Information Centre (AIC) website, I was disappointed to see that the Applicant/Appellant had failed to submit or file any documents in support of the proposal and the variance sought.

Mr. Amiri confirmed that he is the authorized representative for the Owner and apologized for being unfamiliar with the TLAB appeal process. He advised me that he had been out of the country for some time and did not have access to technology which prevented him from being able to file any supporting documentation to the TLAB in this matter.

He acknowledged that he thought the materials submitted to the COA were sufficient for the TLAB appeal process.

While I understood that circumstances can impact a Party's ability to file relevant evidence in a timely manner, I admonished him for failing to submit any evidentiary materials that could assist the TLAB in adjudicating this matter.

Nevertheless, following the Hearing on July 7, 2022, I issued a Decision and Order on July 11, 2022, adjourning the matter and the matter was rescheduled to September 8, 2022.

On the afternoon of September 6, 2022, less than two days prior to the rescheduled Hearing, Mr. Amiri advised the TLAB by email that he would be unable to attend the September 8th Hearing due to a health issue. He requested that the TLAB reschedule the hearing.

In response, I determined that it was not practical to cancel the scheduled Hearing on such short notice and directed TLAB staff to advise Mr. Amiri and Mr. Persad that I intended to convene the Hearing at which time I would address the adjournment/rescheduling request directly with the Owner.

MATTERS IN ISSUE AND JURISDICTION

On a variance appeal, the matters in issue relate to the requested zoning by-law relief and the application of the policy and substantive 'four tests' set out in provincial enabling legislation, *the Planning Act (Act)*.

The failure to satisfactorily support any one variance can result in the dismissal of all. A TLAB Hearing is '*de novo*', meaning the onus lies with the Applicant to establish the basis for the requested relief as if no prior disposition had occurred. While the COA decision is relevant and is to be considered, it is in no way determinative of the appeal.

Under Rule 2.10 of the TLAB's Rules of Practice and Procedure (Rules), the TLAB is empowered to grant exceptions or other relief to the Rules as it considers appropriate, to enable it to effectively and completely adjudicate matters in a 'just, expeditious and cost-effective manner'.

TLAB Rule 23.2 states, "*A Party shall bring a Motion to seek an adjournment unless the adjournment is on consent in accordance with Rule 17.2.*"

Additionally, TLAB Rule 17.2 states, "*Where a Party has obtained from the TLAB an adjourn-to date and all Parties consent to an adjournment request and all Participants have been notified of the request, no Motion is necessary and the TLAB may issue a revised Notice of Hearing.*"

There are no other Parties or Participants. The issue, then, is whether to adjourn the matter for a second time to allow the Applicant/Appellant additional time to submit evidence in support of the Application.

ANALYSIS, FINDINGS, REASONS

Mr. Persad, the owner of the subject property, attended the Hearing on September 8th. At the commencement of the Hearing, I provided an overview of the circumstances, to date, surrounding the events in this matter.

I advised Mr. Persad that despite my July 11, 2022, Order adjourning the first Hearing and directing that the Applicant/Appellant file with the TLAB a series of documents, none had been filed. I also reiterated that no supporting documents have been filed in this matter since the appeal had been filed in April 2022.

Mr. Amiri has informed the TLAB that he is feeling poorly and is unable to attend today's Hearing; he requested that the TLAB reschedule the Hearing.

In essence, the Applicant/Appellant by way of the September 6th email is requesting an adjournment of the scheduled hearing based on an unforeseen illness. In assessing this request, the TLAB must consider the following grounds pursuant to Rule 23.3 of the TLAB's Rules of Practice and Procedure, in deciding whether to grant the adjournment:

- a) Reason(s) for the adjournment.
- b) Interests of the Parties in having a full and fair proceeding.
- c) The integrity and timeliness of the TLAB process.
- d) Whether an adjournment will cause or contribute to any existing or potential prejudice to others.
- e) The effect an adjournment may have on the TLAB's ability to conduct a Hearing in a just, timely, and cost-effective manner.

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At the hearing, Mr. Persad inquired as to whether the presiding Member would be supportive of adjourning the matter to allow additional time to prepare and file appropriate and relevant materials, such as an updated Site Plan and supporting arguments, as required by the TLAB and to reschedule the Hearing to a future date.

Given that there are no other Parties or Participants in this matter, that Mr. Amiri is unable to attend today, and with the understanding that Mr. Persad agrees that an adjournment is appropriate under the circumstances, I am prepared to adjourn the matter and reschedule the Hearing.

I reminded Mr. Persad that the matter in question is to be conducted as a hearing *de novo* and the TLAB is not permitted to abandon its responsibilities to assess the Application under the applicable policy and statutory tests imposed by the *Planning Act*.

He advised that did he could not explain why Mr. Amiri had failed to submit any supporting documentation in this appeal matter even after the July 7th Hearing, and he apologized to the TLAB. He agreed to follow up with Mr. Amiri in this regard.

Based on the foregoing, I find that it is not appropriate to make a final decision and order without a written record and in the absence of 'viva-voce' evidence and that the only fair and sensible solution is to recess the Hearing to allow the additional, but limited, time necessary to present the case to the TLAB.

I advised Mr. Persad that I take this decision to, again, adjourn the Hearing seriously and make it reluctantly with the understanding that the TLAB Rules establish that the Tribunal is committed to fixed and definite hearing dates. Nevertheless, in the circumstances extant, I find that an adjournment would be the most reasonable and fair-minded approach to this situation given that Mr. Amiri is not in a position to proceed in providing comprehensive evidence.

However, I also cautioned Mr. Persad that I will not entertain a further adjournment of this appeal if Mr. Amiri fails to file the documents cited in my July 11th Order prior to the rescheduled Hearing in this matter.

DECISION AND ORDER

The Hearing on September 8, 2022, regarding the above-referenced matter, is adjourned.

TLAB staff is directed to canvas the Parties for a 'return-to' Hearing date in November 2022. Once a Hearing date is confirmed, the TLAB will issue a new Notice of Hearing to reflect this new date.

The Applicant/Appellant is directed to file with the TLAB documents including an updated Site Plan drawing(s), a survey plan for the subject property, a revised list of the variance(s) being requested, a corresponding Zoning Examiner's Notice, an Authorized

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Representative Form 5, and any other supporting documentation, by no later than October 31, 2022.

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

X



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