

DECISION AND ORDER

Decision Issue Date Wednesday, September 21, 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): Long Bao Zhou

Applicant(s): OBD Consultants Inc.

Property Address/Description: 429 Montrose Ave

Committee of Adjustment File

Number(s): 21 245873 STE 11 MV (A1474/21TEY)

TLAB Case File Number(s): 22 131660 S45 11 TLAB

Hearing date: August 24, 2022

DECISION DELIVERED BY TLAB Vice-Chair A. Bassios

REGISTERED PARTIES AND PARTICIPANTS

Appellant's Legal Rep M. Mazierski

Applicant OBD Consultants Inc.

Party (TLAB) John SJ Lee

Party (TLAB) Rolf Paloheimo

Participant Peter Neumann

Participant Sherene Hastings

INTRODUCTION AND CONTEXT

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 429 Montrose Ave (subject property). The purpose of the application is to alter the existing two-storey semi-detached dwelling by constructing a third storey addition, a rear three-storey addition and rear decks on each level of the dwelling. In addition, a secondary suite is proposed in the basement with front and rear basement walkouts.

The subject property is located in the Palmerston-Little Italy neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d0.6)(x735) under Zoning By-law 569-2013

In attendance at the Hearing were:

- Martin Mazierski, legal counsel for the Owner, and Hongxing Xin, the project designer.
- Parties Rolf Paloheimo and John S.J. Lee,
- Participants Peter Neumann, and Louise Gwyn (residing at the same address), and Sherene Hastings.

THE LEGISLATIVE AND POLICY FRAMEWORK

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

ISSUES AND ANALYSIS

The Hearing of this matter was scheduled for **August 24, 2022**. On August 19, 2022, Mr. Mazierski (legal counsel for the Owner/ Appellant) requested an adjourn-to date from TLAB staff.

Mr. Mazierski was advised that the TLAB's Rules of Practice and Procedure (Rules) provide for the adjournment of a set Hearing date either by Motion, or with consent of all Parties. As Mr. Mazierski was not able to secure the consent of the other Parties to the Appeal, and the deadline for filing Motions on this matter had passed, the Hearing was convened as scheduled.

On the evening of August 22, 2022, Mr. Mazierski filed a Witness Statement and Disclosure as evidence for the Hearing, leaving the other Parties and Participants a day to review the proposed evidence and prepare responses. On the evening of August 23, 2022, the night before the Hearing, Mr. Mazierski filed an updated Zoning Notice with the TLAB.

Admission of Late Filings

At the commencement of the Hearing, Mr. Mazierski apologized to the Parties and Participants for the lateness of the submissions.

He explained that he had only received a Zoning Notice the previous day and that the Planner he had engaged had not been comfortable filing a Witness Statement without a proper Zoning Notice to understand exactly what variances were to be requested. Mr. Mazierski said that he asked the Planner to "improvise" but that the Planner was not prepared to do so. He was subsequently not able to contact the Planner to work on the case or to appear.

Mr. Mazierski advised that he had submitted a Disclosure Document and the Witness Statement of Mr. Xin at the eleventh hour in order to have some evidence for the proceeding.

On the issue of the late filings, I heard from the other Parties and Participants, all of whom were opposed to the admission of all of the filings - the Disclosure, the Witness Statement of Mr. Xin, and the updated Zoning Notice.

TLAB Practice Direction 7 is clear and explicit that filing deadlines set out in Notices of Hearing are firm. Late filings will only be permitted under justifiable circumstances.

Mr. Mazierski's explanation for the late filings focused on his attempts to obtain a Zoning Notice so that the "correct" variances necessary to implement the proposal could be identified. In response to my questions, he confirmed that the Appeal had been filed by his client on April 7, 2022 and the Zoning Notice was requested sometime in July.

The unpreparedness of the Appellant to pursue his appeal at this Hearing is in my opinion less about a "delay" in obtaining a Zoning Notice and more about the lack of any

action on the part of the Appellant until all of the deadlines set out in the *Notice of Hearing* had passed.

The Appellant initiated the Appeal. The right to an appeal comes with the obligation to engage in the proceedings responsibly. The filing dates for Witness Statements, Disclosure etc. are clearly set out in the *Notice of Hearing*.

The inaction of the Appellant to prepare for the Hearing of his own Appeal is not a justifiable reason for the processes of the TLAB to be discarded and the rights of the Parties and Participants to fair notice to be ignored.

I ruled that I would not accept the late filings of the Appellant. I find it patently unreasonable and unjustifiable in the circumstances to expect that the other Parties, the Participants, and I, could review, consider and respond to such material within a day.

Request for Adjournment

Mr. Mazierski requested an adjournment of this matter and that a second Hearing date be scheduled which he said would allow the other Parties and Participants an opportunity to review the Zoning Notice and Mr. Xin's Witness Statement.

Upon follow-up questioning from me, Mr. Mazierski clarified that he would still prefer to file additional evidence from a Land Use Planner, but if I would not allow that, he would advance his client's case on the basis of the materials he had already filed.

I heard from the Parties and Participants on the request for adjournment.

Mr. Lee was opposed to any adjournment. He said that the appeal should be dismissed on the fact that the Appellant had not met his responsibilities.

Mr. Paloheimo was opposed to an adjournment. He stated that he, Mr. Lee, and the Participants had all been very careful to respect the timelines and comply with the requirements of these proceedings. In his opinion, the Appellant's behaviour did not respect the process.

The Participants in this matter echoed the statements of the Parties, voicing in particular how stressful it has been to deal with the uncertainty of what will happen with respect to the Appeal. Ms. Hastings in particular was anxious that the stress not be prolonged.

The TLAB's Rules are clear and explicit. Hearing dates are fixed and proceedings will take place on the date set by the TLAB and provided in the *Notice of Hearing* unless the TLAB orders otherwise. A Request for Adjournment must be made by Motion, or agreed to by the other Parties.

No Motion has been allowed, or made, by the Appellant, and the other Parties are not in agreement that an adjournment be granted.

TLAB Rule 23.3 sets out grounds for consideration in granting an Adjournment.

Considerations in Granting Adjournment

- 23.3 *In deciding whether or not to grant a Motion for an adjournment the TLAB may, among other things, consider:*
- a) the reasons for an adjournment;*
 - b) the interests of the Parties in having a full and fair Proceeding;*
 - c) the integrity of the TLAB's process;*
 - d) the timeliness of an adjournment;*
 - e) the position of the other Parties on the request;*
 - f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;*
 - g) the effect an adjournment may have on Parties, Participants or other Persons; and*
 - h) the effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost-effective manner.*

A Motion for Adjournment was not filed within the deadline for the filing of Motions on this matter. In response to Mr. Mazierski's request for adjournment on the day of the Hearing, I do not find that there is any justifiable reason to grant an adjournment. The necessary steps and deadlines were made very clear to the Appellant via the *Notice of Hearing*. The rights and responsibilities of an Appellant/Party are very clearly laid out in the TLAB's Rules.

Mr. Mazierski explained that his client did not understand the necessities of the process. It was, however, incumbent on the Appellant, having initiated the Appeal, to take steps to inform himself and/or to obtain timely advice.

The facilitation of a TLAB hearing is costly, involving resources of the City, staff time and the Member's time, which could have been devoted to dealing with another matter in the TLAB's substantial caseload. The cost and impact to the neighbours involved in this matter are also to be respected.

The Appellant in this case has not fulfilled the requirements of the TLAB's process for the hearing of his Appeal and in doing so has forfeited his opportunity to make the case for his Appeal before the TLAB.

An adjournment of this matter will not be allowed.

CONCLUSION

The Appellant has failed to file evidence and comply with the requirements of the TLAB's Rules of Practice and Procedure. It follows that the Appeal cannot be granted by the TLAB in absence of the necessary evidence that the proposal meets the four tests set by s.45(1) of the *Planning Act*.

DECISION AND ORDER

The Appeal is dismissed. The Committee of Adjustment decision noted above is final and binding, and the file of the Toronto Local Appeal Body is closed.

X



A. Bassios
Panel Chair, Toronto Local Appeal Body