

# MOTION DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 05, 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): ANDREA SKINNER

Applicant: DREW LASZLO ARCHITECT

Property Address/Description: 40 PARK HILL RD

Committee of Adjustment Case File Number: 22 105813 NNY 08 MV (A0057/22NY)

TLAB Case File Number: **22 139907 S45 08 TLAB**

**Hearing date:**      Wednesday, September 28, 2022

**DECISION DELIVERED BY** Member P. Turtle

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	ANDREA SKINNER
Applicant	DREW LASZLO ARCHITECT
Owner	MAXWELL DAVID S HAYMAN
Primary Owner/Party.	NAOMI SOPHIA HAYMAN
Appellant's Legal Rep.	MATTHEW HELFAND
Party	PETER GLAZER
Party's Legal Rep.	JOEL D FARBER
Party's Legal Rep	MATTHEW RUTLEDGE
Expert Witness	ADRIAN LITAVSKI
Expert Witness	MICHAEL MANETT
Expert Witness	PETER KUNTZ

## **INTRODUCTION AND CONTEXT**

On April 14, 2022 the North York Committee of Adjustment (COA) granted approval for the following nine variances from City of Toronto Zoning Bylaw 569-2013, as amended, to permit the construction of a new residential detached dwelling on 40 Park Hill Road (the subject property):

- Building depth of 21.26 m, whereas 19.0 m is permitted;
- Building length of 21.26 m, whereas 17.0 m is permitted;
- A decreased north side yard setback of 0.62 m;
- A floor space index of 0.695 times the area of the lot;
- A platform and stair encroachment into the north and south side lot lines;
- An eaves projection at the north lot line; and
- An increased driveway width of 4.08 m.

On April 29, 2022, Andrea Skinner and Sasha Litwin (the neighbours located immediately to the south of the subject property) appealed the COA approval of the nine minor variances to the Toronto Local Appeal Body (TLAB).

Peter Glazer lives immediately to the north of the subject property and he is also a Party to the appeal. At the Committee of Adjustment hearing, he expressed concern about the effect of the construction on an Eastern White Cedar tree on his property, close to the property line of the subject property.

This matter is scheduled for Hearing on November 24, 2022. The Notice of Hearing (dated July 27, 2022) contains a schedule for the filing of Document Disclosure, Participant and Expert Witness Statements; Response to Statements; and Reply to Response Statements (submissions) pursuant to TLAB Rule 16.

By Motion dated September 12, 2022 Maxwell and Naomi Hayman, the owners of the subject property, served a Notice of Motion (to be heard in writing) requesting that the dates for filing submissions be amended as follows:

- Document Disclosure and Statements (Expert & Participant) from September 26, 2022 to October 7, 2022;
- Response to Statements (Expert & Participant) from October 11, 2022 to October 21, 2022; and

- Reply to Response to Statements (Expert & Participant) from October 20, 2022 to October 30, 2022.

The Motion did not request an adjournment or change to the scheduled Hearing date of November 24, 2022.

The Motion is opposed by Andrea Skinner and Sasha Litwin (Appellants) and by Peter Glazer. The Appellants and Peter Glazer ask that the Motion be denied and that the submission dates remain as set out in the Notice of Hearing.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

TLAB Rules 16.1 to 16.13 govern Disclosure and the timelines for filing of documents, including Witness Statements, Responses and Replies. The purpose of the disclosure requirements is to ensure that parties and Participants have adequate opportunity to consider and respond to the submissions of other Parties to an appeal well in advance of scheduled hearing dates. Complete disclosure in advance of a hearing date is consistent with a fair hearing and reduces the likelihood of surprise, which may lead to last minute adjournment requests and related delays to the hearing itself.

The TLAB encourages Parties to resolve their differences where possible and for that reason, the TLAB will carefully consider a request for adjustment of submission dates to facilitate settlement. However, in this case, the Motion to adjust submission dates is opposed by two of the Parties to the appeal.

## **SUMMARY OF EVIDENCE**

Maxwell and Naomi Hayman have filed an affidavit in support of their motion from Gideon Ampofo, an articling student at the law firm that acts on their behalf in this appeal. The affidavit states that the Haymans are engaged in without prejudice settlement discussions with Mr. Glazer

In support of the Motion, they argue that the discussions could affect the content of the Expert Report they intend to file. They further argue that if their discussions with Mr. Glazer result in a settlement of the issue, that hearing time and resources will be reduced.

They further assert that no Party would be prejudiced by the modest extension they are seeking.

Mr. Glazer has filed an affidavit stating that the dates for submissions have been set for some time, and argues that the Parties can continue their without prejudice settlement discussions while still ensuring their submissions are filed in accordance with the schedule set out in the Notice of Hearing. The Appellants similarly oppose the Motion,

stating that the dates for submissions have been set for some time, and that the filing of submissions does not preclude the Parties from continuing settlement discussions.

## **ISSUES AND ANALYSIS**

Because of the timing of the written hearing in this matter, the first date sought to be changed by the Motion passed before the TLAB had reviewed all the Motion materials filed. The Parties appear to have filed documents on September 26, 2022, in accordance with the first dates contained in the Notice of Hearing. Therefore, the first requested changes are now moot. The Motion to grant relief from the remaining dates for receipt of submissions is not moot, because those dates are upcoming.

I have carefully considered the Haymans' position that the dates should be delayed to facilitate settlement, and their argument that settlement may require amendment of some of the Parties' submissions. I note that the Haymans' evidence refers to the settlement discussions, but it does not assert that granting relief from the dates for submissions to the dates proposed will (at least in the Haymans' view) increase the likelihood of settlement. On reviewing all the submissions of the Parties, I am persuaded by the submissions of Mr. Glazer and the Appellants that the originally scheduled dates should remain in place, and that settlement discussions may continue despite the filing of submissions.

The TLAB encourages the parties in this case to continue their settlement discussions while preparing and filing their submissions. In the event that some of the submissions are rendered irrelevant by any settlement that may occur, the Parties may advise the TLAB of this development.

Furthermore, if it is necessary to amend any documents as a result of any partial resolution of the issues currently raised by the appeal, the Parties may seek leave of the TLAB to do so. However, I find that the possibility of either of these events should not interfere with the filing of documents as directed in the Notice of Hearing.

## **CONCLUSION**

The requested relief in the Notice of Motion dated September 12, 2022 is denied.

## **DECISION AND ORDER**

The requested relief in the Notice of Motion dated September 12, 2022 is denied.

The TLAB confirms that the dates for submissions contained in the Notice of Hearing shall remain as scheduled.

X Paula Turtle

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Paula Turtle

Signed by: pturtle2