

# MOTION DECISION AND ORDER

**Decision Issue Date**      Tuesday, October 18, 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): WEN LE

Applicant: PROJEKT STUDIO ARCHITECTS

Property Address/Description: 108 ALBERTUS AVE

Committee of Adjustment Case File Number: 20 116500 NNY 08 MV (A0138/20NY)

TLAB Case File Number: 21 116616 S45 08 TLAB

**Hearing date:**            Tuesday, November 29, 2022

**DECISION DELIVERED BY** G. Swinkin

## REGISTERED PARTIES AND PARTICIPANTS

Owner	STEFAN ANDREAS SOLYOM
Applicant	PROJEKT STUDIO ARCHITECTS
Appellant	WEN LE
Party (TLAB)	CATHERINE MANOUKIAN
Party's Legal Rep.	DAVID BRONSKILL
Participant	WENDY ORBACH
Expert Witness	JANE MCFARLANE
Expert Witness	MICHAEL BARTON

## **INTRODUCTION AND CONTEXT**

Wen Le (the “Appellant”), the Appellant in this matter, has brought a motion under the Toronto Local Appeal Body’s (the “Tribunal”) Rule 16.1 (c) seeking an Order of the Tribunal directing the production of particulars from the Owner/Applicant as to plans and drawings that they may be relying upon and advancing at the rescheduled hearing of this appeal.

The specific request as set out in the Notice of Motion is as follows:

“1. We have identified document deficiencies in the Application. Applicant Document Disclosure deficiencies were identified as: The CA Plans on file for the subject property have a floor space index (FSI) of 0.927 that do not match the variance requested of FSI 0.80.

2. We ask additional documents be provided to resolve the identified deficiencies.”

This hearing, as a result of a Motion brought by the Appellant, was previously adjourned to November 29, 2022 due to the unavailability of her expert planning witness on the last scheduled hearing date. That Motion also included a request for similar document disclosure which was not then accommodated on the basis that that request was premature. This determination sprung from the Applicant/Owner’s Response to the Motion, as filed by counsel, David Bronskill, which indicated that with the rescheduling of the hearing, new dates for document disclosure and witness statements would be fixed and that if there was to be any change to the application, material would be filed in accordance with the new timetable. He made no assertion in that Response that there was any change or that any new material would be filed.

As a result of the rescheduling and the issue of a new Notice of Hearing, the revised date for Applicant Disclosure in this appeal was September 20, 2022. No fresh Applicant Disclosure was filed on or since that date.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **Toronto Local Appeal Body Rules of Practice and Procedure**

#### **Disclosure May be Ordered at any Stage**

16.1 In addition to the Rules for the Filing, Service, Exchange and disclosure of evidence and Documents, the TLAB may, at any stage in a Proceeding, make orders for:

- a) the discovery of a Party under Rule 18;
- b) the Exchange of witness statements and reports of expert witnesses;

- c) the provision of particulars;
- d) the Exchange of a list of issues; and
- e) any other form of disclosure.

## **SUMMARY OF EVIDENCE AND ANALYSIS OF SAME**

No Response to Motion was filed by or on behalf of the Owner/Applicant.

The Tribunal has reviewed the decision of the Committee of Adjustment (the "Committee") which is the subject of this appeal. Relief was granted with respect to Floor Space Index ("FSI") whereby in lieu of a maximum FSI of 0.6, the Committee has authorized an FSI up to 0.8. Interestingly, the figure "0.8" is printed in boldface type. Presumably this is due to the fact that it is a modified figure from that for which the Applicant applied, having been 0.94.

For the purpose of dealing with this Motion, the Tribunal also reviewed the Expert Witness Statement of Jane McFarlane, the consulting planner retained by the Owner/Applicant, dated May 3, 2021. This was the Expert Witness Statement filed in connection with the Notice of Hearing for the previously scheduled hearing date.

It is clearly acknowledged in that Expert Witness Statement that the maximum FSI authorized by the Committee is 0.8.

At paragraph 88 of that Expert Witness Statement, Ms. McFarlane says as follows:

"I have also included confirmation of either new dwelling or addition with respect to the previous approvals in the Study Area in my Chart in Tab 30. This is because many of the newer dwellings have ground floors which are not include in the FSI calculation. I will explain in the hearing how density is calculated in the new By-law and how the FSI assessment is calculated differently for new builds versus additions."

Ms. McFarlane has shone a light here on the nature of the testimony which she intends to give in the hearing. Apparently, she is suggesting, there is a difference in the calculation of FSI as between new builds and additions. As the Owner/Applicant has not filed any new plans through Applicant Disclosure on the fresh date for same, and as a result would now not be permitted to do so, subject to some reasonable explanation for a late filing and authorized Rule relief, it appears that the Owner/Applicant will be relying on the previously filed plans..

It may well be that the person who prepared the plans mis-stated the FSI endorsed thereon due to a failure to understand this apparent difference in calculation methods. However that may be, Ms. McFarlane has effectively promised to clarify this matter when she testifies.

**Decision of Toronto Local Appeal Body Panel Member: G. Swinkin  
TLAB Case File Number: 21 116616 S45 08 TLAB**

There don't seem to be any 'particulars' in the sense of data or facts which are being withheld and which could be compelled to be disclosed. Ms. McFarlane will give her testimony and can be tested/challenged on it through cross-examination.

The Committee decision puts a ceiling on the FSI for the proposed construction and if that decision is sustained by the Tribunal, the Owner/Applicant will have to live with that. The Committee decision also imposes a condition requiring construction of the east and west elevations in substantial conformity with certain specified drawings.

To the extent that there may be some alterations to the internal floor area without alteration of the exterior walls in order to comply with the authorized FSI, that is a matter which is not generally thought to be appropriately the subject of comment by third parties.

## **CONCLUSION**

For the foregoing reasons, the Tribunal finds no basis for allowing the Motion of the Appellant.

## **DECISION AND ORDER**

The Tribunal ORDERS THAT the Motion of the Appellant is dismissed.

X



G. Swinkin  
Panel Chair, Toronto Local Appeal Body