

ADJOURNMENT ORDER

Decision Issue Date Wednesday, November 30, 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: Wednesday, November 23, 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) refusing 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.

The only Parties in this matter are the Applicant/Appellant (Applicant), Mr. Amiri, and Sunil Persad (Owner). The TLAB convened two Hearing days, the first on July 7th and the second on September 8, 2022. Both proceedings result in an adjournment of the matter to allow the Applicant additional time to prepare and submit filings in support of the request variance.

The TLAB has since issued two previous Adjournment Orders in this matter, on July 11, 2022, and September 13, 2022, respectively, at the request of Mr. Persad. The TLAB also convened a virtual Teleconference call with the Owner.

In the interim since the last Hearing date on September 8, 2022, however, Mr. Amiri informed the Tribunal that he is no longer the Owner's representative in this appeal matter and has withdrawn from the Application.

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 in this matter. The issue, then, is whether to adjourn the matter for a third time to allow the Applicant/Appellant additional time to submit evidence in support of the Application.

ANALYSIS, FINDINGS, REASONS

Mr. Persad, the subject property owner, attended the Hearing on November 23, 2022. At the commencement of the Hearing, I provided an overview, to date, of the circumstances surrounding the events in this matter.

I advised Mr. Persad that despite the two Adjournment Orders previously issued and cited above, directing that the Applicant file with the TLAB a series of documents, to date, none had been filed. I also reiterated that no supporting documents have been filed since the appeal was filed in April 2022 which I found rather troubling.

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.

I explained to Mr. Persad that I was prepared to hear from him if he wished to speak to the Application and the variance being requested and if he intended to explain to the TLAB how the variance satisfied the four statutory tests in the *Planning Act*. He was reluctant to do, suggesting that he had no basis to rely on to speak to the tests.

Mr. Persad, again, inquired as to whether the presiding Member would be supportive of adjourning the matter once more 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. He asked that the Hearing be adjourned and rescheduled to a future date.

While I was reluctant to do so given the circumstances in this matter, I concluded that granting the Owner an additional adjournment is appropriate and procedurally fair since this is a unique situation and there are no other Parties or Participants in this matter. I find that given the issues Mr. Persad has encountered with his representative and Mr. Amiri's late notice of disengagement from this appeal matter, a further (but final) adjournment is appropriate to allow Mr. Persad the opportunity to retain a new representative to prepare the case and file the requisite supporting materials.

However, I again 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*.

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There is no right to a variance; the obligation is on the proponent, in this case, Mr. Persad, to demonstrate his application meets the prerequisite elements of s. 45(1) of the Planning Act, related to variances.

Therefore, 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 adjourn the Hearing to allow the Owner additional time necessary to present the case to the TLAB.

I advised Mr. Persad, again, that I take this decision to 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 and Mr. Persad's request, I find that an adjournment would be the most reasonable and fair-minded approach to this situation. However, I also cautioned Mr. Persad that the TLAB **will not entertain a further adjournment of this appeal** if Mr. Amiri fails to file the documents cited in order to adjudicate this matter.

ORDER

The Hearing on November 23, 2022, regarding the above-referenced matter, is adjourned.

TLAB staff will schedule a 'return-to' Hearing date in early 2023 for this appeal matter. Once a Hearing date is confirmed, the TLAB will issue a new Notice of Hearing to reflect this new date along with new deadline due dates for the submission of supporting materials, except for the election of Party and Participant status which will remain unchanged.

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, and any other supporting documentation by the due dates in the new Notice of Hearing in this matter.

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