

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 20, 2014

CASE NO(S): PL140170

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Esther Burstein
Applicant:	Temple Emanu-EL Synagogue
Subject:	Consent
Property Address/Description:	120 Old Colony Road
Municipality:	City of Toronto
Municipal File No.:	B031/13NY
OMB Case No.:	PL140170
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Heard: August 1, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Temple Emanu-EL Synagogue
("Applicant")

P. Gross

Esther Burstein ("Appellant")

C. Wrock

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
AUGUST 1, 2014 AND ORDER OF THE BOARD**

INTRODUCTION

[1] In 2013 the Applicant had filed a development application with the City of Toronto with regard to its property known municipally as 120 Old Colony Road. The development application had been approved with conditions by the City of Toronto Committee of Adjustment.

[2] On or about February 14, 2014 the Appellant by her counsel filed an appeal indicating that two witnesses would be called including a land use planner.

[3] By Notice of Appointment of Hearing dated April 30, 2014, the Board set this matter down for a hearing on August 1, 2014.

[4] A letter from counsel for the Appellant dated July 28, 2014 was sent by fax to the Board and the Applicant's counsel indicating that an oral motion would be brought at the commencement of the hearing for an adjournment as "...our planner...has not yet been able to provide us with an initial report which will be the basis of our submissions at the hearing..."

[5] Counsel for the Applicant replied by letter dated July 29, 2014 objecting to the request for adjournment submitting that the Appellant has had ample time to obtain an "initial report", that counsel had attempted communications with counsel for the Appellant a number of times without success, and the request did not comply with Rule 64 of the Board's *Rules of Practice and Procedure* which state the following:

Emergencies Only

The Board will grant last minute adjournments only for unavoidable emergencies such as illness, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

[6] The Board heard the motion orally on August 1, 2014 and rendered an oral decision as set out below.

[7] These are the facts that the Board has taken into account in the making of its decision:

- a. The Appellant filed her appeal on February 14, 2014 indicating that two witnesses would be called, one of which would be a land use planner;
- b. Despite communications attempts by counsel for the Applicant, no contact

was made with the counsel for the Appellant prior to the Notice of Appointment for Hearing notice being issued on April 30, 2014;

- c. The Notice of Appointment for Hearing was issued April 30, 2014 for a hearing on August 1, 2014 (effectively providing about three months' notice);
- d. The first notice with regard to an adjournment request was given by the Appellant's counsel on July 28, 2014 in which it was noted that their planner had not yet been able to provide an initial planning report;
- e. Counsel for the Appellant states that he has had his practice restricted due to a medical situation in his family;
- f. Counsel for the Applicant submits that his client will:
 - i. Be prejudiced in time and expense by a delay
 - ii. That the Appellant had ample time to obtain another planner
 - iii. That the adjournment request is acknowledged to be a last minute request and as a last minute request it does not meet the requirements of Rule 64 for emergency adjournments.

[8] The Board dismisses the motion for adjournment for the following reasons.

[9] First the Board finds that the Appellant had ample opportunity to retain a planner, either in the lead up to this matter at the municipal level or alternatively since filing the appeal on or about February 14, 2014, about five and a half months ago. In the Board's view that would have been the appropriate time to see "if there were any planning grounds for the appeal", and not after the fact.

[10] Secondly the Board finds that the Applicant was only made aware of the request on July 28, 2014, and that this is a last minute adjournment request.

[11] The Board finds that it would be prejudicial to the Applicant if an adjournment were granted due to delay and additional costs for the preparation for another hearing, as the Applicant was prepared to proceed.

[12] Finally the Board does not find the basis for the request for the adjournment to fall within the scope of Rule 64 as being an unavoidable emergency.

[13] Thus the Board orders that the motion is dismissed.

[14] As obiter dicta, the Board would note that following the rendering of the decision on the motion to adjourn, counsel for the Appellant with the consent of counsel for the Applicant withdrew the appeal on behalf of his client.

[15] As the appeal was withdrawn, the Board has no jurisdiction, and the decision of the Committee of Adjustment comes into full force and effect.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

Ontario Municipal Board

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