

ENVIRONMENT AND LAND TRIBUNALS ONTARIO
LOCAL PLANNING APPEAL TRIBUNAL

BETWEEN:

HADI SALMASIAN

(Appellant)

and

170 PRESTON LTD.

(Applicant)

**LIST OF PROPOSED WITNESSES AND ISSUES OF
THE APPELLANT DR. HADI SALMASIAN**

(PURSUANT TO LPAT'S DIRECTIVE BY EMAIL OF SEPTEMBER 21, 2018)
(Re: lot on 7 Chestnut Street, Ottawa)

Appellant's submissions in the matters scheduled to be argued for one day starting on Wednesday, October 3, 2018, at 10:00 AM, at City Hall, Keefer Room, 110 Laurier Avenue W., Cartier Square, Ottawa, ON K2P 2L7.

Minor Variance Application to the Committee of Adjustment, City of Ottawa

File No.: D08-02-18/A-00159.

Owner(s): 170 Preston Ltd.

Location: 7 Chestnut Street.

September 26, 2018

Dr. Hadi Salmasian

(Appellant)

FILED AND SERVED BY EMAIL TO:

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LIST OF PROPOSED WITNESSES AND ISSUES OF THE APPELLANT DR. HADI SALMASIAN

LPAT directive

1. This is in response to the LPAT directive of September 21, 2018:

Given the matters raised by the parties in their correspondence, for the purposes of efficiencies of the hearing, all parties of record (inclusive of the City of Ottawa) are to provide a list of the proposed witnesses appearing in person, and a brief description of the issues and areas of evidence they will cover in their testimony, and if applicable, qualified areas of expertise relating to their testimony. This list is to be provided to all parties, inclusive of the City, and copied to the Tribunal, not later than 4:00 p.m. on Wednesday, September 26, 2018.

Issues in this appeal

2. There are four (4) issues in this appeal:
 - A. Is s. 45(1) unconstitutional because it violates equality before and under the law?
 - B. Is s. 45(1) unconstitutionally vague in defining and delimiting statutory authority to decide variances?
 - C. Do the Committee of Adjustment and LPAT have no statutory jurisdiction to decide the application because the variance is not minor?
 - D. If constitutionality and jurisdiction are satisfied, should the application be approved?

Overlap of factual basis for the issues

3. The four different issues draw on many of the same facts. For example, if the size and impact of the variance meet the jurisdictional threshold, then they nonetheless continue to be relevant to the question of whether the development is desirable. Likewise, the question of nuisance-harm impact is relevant to all four issues. The disproportionate frequency and character of approvals of applications is evidence both of vagueness and inequality in the impugned provision, which enable systemic bias in decisions. In-effect ignoring the live soil toxicity evaluation in decisions to approve applications is evidence both of vagueness and inequality in the impugned provision. And so on.

List of the proposed witnesses appearing in person, and a brief description of the issues and areas of evidence they will cover in their testimony, and if applicable, qualified areas of expertise relating to their testimony

4. **Dr. Hadi Salmasian** (Appellant)
 - i. Will testify that the factual information in his “SUBMISSIONS OF THE APPELLANT DR. HADI SALMASIAN” dated August 31, 2018, is true and will submit Sections I and II of the said submissions as evidentiary exhibits.
 - ii. Will testify about the impact in the neighbourhood of minor variance applications and the anticipated impact of the application at 7 Chestnut.
 - iii. Will testify about his participation in the City’s live soil toxicity study.

5. **Ronald Rose** (Chair, Planning Committee of Old Ottawa East Community Association) [Has provided a signed statement for reading; may be present in person]
 - i. Will testify that many large triplex buildings have been built pursuant to the minor variance provision, which are not desirable and transform the character

of the neighbourhood into one that is not intended by the bylaw or Official Plan.

- ii. Will testify that such minor variance approvals permitting large triplex buildings cause unjustified erosion of the zoning type and are not minor.

6. **Bruce Saunders** (Neighbour, and former owner of 7 Chestnut Street)

- i. Will testify how 7 Chestnut Street was surrounded by large developments pursuant to minor variance applications, and why he sold the property.
- ii. Will testify that 3-story triplexes become four-plexes with unforeseen parking needs that invade the neighbourhood laneways.
- iii. Will testify about the impact of minor variance applications on the neighbourhood, and his experiences at committee opposing applications.

7. **Dr. Denis Rancourt** (Neighbour, Former litigant with OMB, Expert on environmental toxic substances, Researcher - Ontario Civil Liberties Association)

- i. Will testify that he personally faxed, email-served and filed the Notice of Constitutional Question (dated June 5, 2018) to the Attorney Generals, and the status-updates (dated August 8, 2018) to the Attorney Generals (that the appeal moved from Committee of Adjustment to LPAT) were also faxed and email-served and filed.
- ii. Will testify that the factual information (section “II. Facts relied on”) in the Appendix of “TAB 3” in the “BOOK OF TABS OF THE APPELLANT DR. HADI SALMASIAN FOR HIS SUBMISSIONS DATED AUGUST 31, 2018” was collected and assembled by him and is true, and will submit the said section “II. Facts relied on” as an evidentiary exhibit.
- iii. Will testify about the nature and impact in the neighbourhood of minor variance applications.
- iv. Will testify about his experience with the Committee of Adjustment, regarding its interpretation and application of s. 45(1) of the *Planning Act*.
- v. Will testify to the authenticity of written testimony from expert Mr. Clive Doucet, which he received in the form of an affidavit. (Mr. Doucet probably

cannot appear in person at the hearing. His written document in the form of an affidavit and area of expertise are summarized below.)

- vi. Will give testimony, supported by documentary and photographic evidence, of current development projects in the immediate neighbourhood, which did not obtain minor variance derogations from the bylaw yet are amply profitable for the developer and desirable for the neighbourhood.
 - vii. Will give testimony about the active ongoing study of soil toxicity in the neighbourhood, supported by documents.
 - viii. Will give expert testimony about environmental soil toxicity in the neighbourhood. His qualified areas of expertise relating to the toxicity testimony are: environmental analysis of contaminated soils and sediments, statistical analysis of analytic results, dispersal and distributions of contaminants, and the mechanism of cancer susceptibility.
8. **Clive Doucet** (BA, MSc - Urban Anthropology; elected four times to the City Council of Ottawa, Ward 17, and served from November 1997 to November 2010; served on the Planning Committee and several other committees; authored three books in the field of urban development)

The written expert report of Clive Doucet contains these topics:

- i. Systemic bias of the Committee of Adjustment, with magnitude of allowed variance correlated to size of the developer.
- ii. Resulting development being virtually always “lot-line to lot-line” construction and higher than the zoning permits.
- iii. Character and extent of the deleterious impacts of the development resulting from bylaw derogations.
- iv. Politico-social mechanisms, prevalence and evidence of planning bias in favour of developers rather than community needs and desires.

All of which is respectfully submitted on this 26th day of September, 2018.



September 26, 2018

Dr. Hadi Salmasian
Appellant

