

# DECISION AND ORDER

**Decision Issue Date**      Thursday, July 19, 2018

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): YUI TOW SO

Applicant: AMBIENT DESIGN LTD.

Property Address/Description: 922 A BLOOR ST W

Committee of Adjustment Case File Number: 17 222590 STE 19 MV

TLAB Case File Number: **18 114644 S45 19 TLAB**

**Hearing date:**      Thursday, June 28, 2018

## APPEARANCES

<b>Name</b>	<b>Role</b>	<b>Representative</b>
Ambient Design Ltd.	Applicant	
1860972 Ontario Ltd (Yui Tow So officer)	Appellant	Russell Cheeseman
Victor Hipolito	Expert Witness	
David Riley	Expert Witness	
Seymour German	Expert Witness	
Francesco Zumbo	(owner, 922 Bloor St W)	

## DECISION DELIVERED BY T. Yao

1860972 Ontario Ltd, owner of 922A Bloor St West, constructed a second floor apartment without benefit of a building permit. To legalize the apartment, it needs the

five variances shown in Table 1<sup>1</sup> below. It may be seen that variances 1 and 5 are the same as are variances 2 and 4. This is because the Buildings Department plan examiner must check permit applications against two concurrent zoning by-laws, until appeals against 569-2013 are disposed of.

It applied to the Committee of Adjustment on January 24, 2018. Through some confusion the matter was heard in the morning and approved. However, it was also listed for the afternoon agenda, so the Committee of Adjustment reopened the hearing and with Mr. Zumbo in attendance, the Committee refused 1860972 Ontario Ltd’s application; apparently based on concerns with a possible easement in favour of Mr. Zumbo. 1860972 Ontario Ltd appealed and so this matter comes before the TLAB.

Only the parking space variance was caused by the new construction; the others result from the Buildings Department’s wish that 1860972 Ontario Ltd use this opportunity to “legalize” the entire building.

The remaining variances are thus a recognition of walls and setbacks that have been in place since the building was constructed, probably before Toronto’s first zoning by-law. Variance 2 deals with the rear wall of the first floor and is unconnected with the construction. Behind the wall is a parking pad 3.1 m wide and because there is a residential zone on the other side of the pad, there should be a 7.5 m separation instead of 3.1 m. There is no room for a parking space, and in any case, unobstructed rear access is essential for the proper functioning of 922, 922A and 924 Bloor St.

Variance 3 deals with the brick wall shown in Photo 1. This wall should have been built 5.5 m back from the common lot line instead of being along the lot line. I will discuss this further in the section “Matters in Issue”.

<b>Table 1. Variances sought by 1860972 Ontario Ltd.</b>			
From by-law 569-2013 (new City-wide)			
		Required	Proposed
1	Additional dwelling unit triggers need for one parking space		No parking spaces
2	Rear yard setback	7.5 m	3.1 m

<sup>1</sup> The tables, photos and diagrams form part of this decision.

3	A main wall with window or doors must have a side yard setback of 5.5 m		0.0 m
From by-law 438-86 (former City of Toronto)			
4	Setback from residential (in this case rear lot line)	7.5 m	3.1 m
5	The added dwelling unit triggers the need for one parking space		No parking spaces

**BACKGROUND**

**Physical description of proposed construction**

The white vinyl clad structure in Photo 1 (below, on this page) is the new construction. The green cones rest on the rooftop of the first floor portion of the building. There is an open door leading to a hallway to another door (not visible) between 922A and 922 Bloor St. W, which is Mr. Zumbo’s concern.



View Looking Southeast from Top of 1st Floor at Rear of Subject Property

Photo 4

**Photo 1.**



- hatched area on the roof, marked “Proposed Area of Refuge” for fire safety purposes.

These last details are mentioned merely to orient the reader. Because of the shading it looks as if there is a white “square” in the centre of the roof. The roof is flat and featureless; the white is merely what is left over after the shading for the “Area of Refuge”.

If 1860972 Ontario Ltd obtains the variances, it will tear out the illegally constructed walls and start afresh. No 922A Bloor St. W’s second floor, originally one unit, became two units after the illegal construction. If these variances are granted, the number of second floor units would continue to be two, but the layout and construction would be all new. 1860972 Ontario Ltd will “bump out” the original wall by 4.4 m (14 feet 4 inches), adding 32.4 m<sup>2</sup> (349 sq. ft.) of gross floor area. Mixed use zoning permits one times for commercial and two times for residential, so the proposed floor space index is far under this limit. At the end of the day 1860972 Ontario Ltd will create a proper 46.4 m<sup>2</sup> (500 sq. foot) second-floor apartment and leave the remaining units (one at the front, second floor; one on the third) unchanged.

Since none of the illegal construction is intended to remain, the illegal construction cases that say tests are to be applied on their merit, as if the illegal construction had not occurred, are not applicable. This is an ordinary case where the owner seeks approval for construction to occur in the future.

## **EVIDENCE**

I heard from the following witnesses, all of whom I qualified as capable of giving opinion evidence in their fields: David Riley (land use planning), Filipe Ferreira (architectural technology), Seymour German (real estate law). Francesco Zumbo testified in opposition to the variances.

## **MATTERS IN ISSUE**

The TLAB panel must be satisfied that the application meets the four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Mr. Zumbo's opposition to the variances were not based on s. 45(1). He reasoned that if the variances are not granted, 1860972 Ontario Ltd might be unable to proceed with the proposal. If so, what is shown in the Photo 1 would remain the same and this is convenient for him and his tenants.

Please see Photo 1 again. On the left is a brick wall with three windows and a door. As I have explained, the door leads to a hallway that leads to another door between the two buildings. This door (not shown) will be closed off. The new construction will extend (i.e. to the left) past the window nearest the white doormat. This window will also be bricked off. If Mr. Zumbo were successful and the openings were allowed to remain, the window would continue to provide ventilation to one of Mr. Zumbo's tenants and the door might allow his tenants access to the Place of Refuge. But for 1860972 Ontario Ltd, the openings create security, insurance and building code issues.

This unusual arrangement originated in 1965. Mr. German, 1860972 Ontario Ltd's lawyer and real estate expert, testified that in 1965 there was a common owner, Mr. Singer, who sold no. 922 to Mr. Zumbo's parents and no. 922A to a predecessor of 1860972. Presumably someone prior to Mr. Singer's ownership installed the doors that allow the buildings' two halves to gain upper floor access to each other when both were under common ownership. Mr. German<sup>2</sup> further testified that neither of the present titleholders has a right of easement over the other's lands.

Mr. Zumbo said that a Fire Prevention inspection has been carried out with respect to both buildings and Mr. Zumbo has also received formal notices of deficiencies in his building. Those matters are outside my jurisdiction.

Diagram 1 shows a **solid line** on 1860972 Ontario Ltd's side and an **opening** on Mr. Zumbo's side for two second floor windows and a door. The wall between the buildings is a party wall with legal ownership running down the centre of the wall. If 1860972 Ontario Ltd sought to build straddling this line, it would have to obtain permission from Mr. Zumbo. However, if it builds entirely on its own land, which is its intention as per the submitted plans, it may do so without Mr. Zumbo's permission. If Mr. Zumbo needs to obtain a building permit in the future, his building will need the same variance for a wall with openings, so it seems to me that there is an incentive for the two owners to cooperate going forward.

Mr. Zumbo raised no matters within the scope of the *Planning Act*. He candidly said he had no interest in the requirement for one additional parking space, which is the only substantive matter in this appeal. Accordingly, I undertake my obligation to determine whether the statutory tests for the minor variances have been demonstrated.

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<sup>2</sup> Qualified as an expert, see page 5

## ANALYSIS, FINDINGS, REASONS

This property is a small multi-unit rental property within one block of the Ossington subway station. The proposal is consistent with the transit and rental apartment friendly policies in the Provincial Policy Statement<sup>3</sup>, conforms to similar policies in the Growth Plan<sup>4</sup>, and maintains the intent of the Official Plan, particularly the sections entitled Structuring Growth<sup>5</sup>, Avenues<sup>6</sup>, and Mixed Use Areas<sup>7</sup>. A new small apartment for a car-less tenant is desirable for the appropriate use of 922A Bloor St W. Evaluating whether the zoning intent is met, variances 2 (rear yard) and 3 (opening in party wall) are merely a recognition of existing conditions. One new dwelling unit without a new parking space in a previously existing 2-unit building in this location is minor. The application meets all the tests set out in the *Planning Act*.

## DECISION AND ORDER

I authorize the variances set out in Table 1.

X



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Ted Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao

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<sup>3</sup> Provincial Policy Statement 2.2.1.2(a), (c) and (d), which direct growth to settlement areas that have existing municipal infrastructure, locations with existing or planned transit and public service facilities and can support the achievement of complete communities. 2.2.1.3 (c) which encourages the achievement of complete communities through a more compact built form. 2.2.1.4(c) which supports a range and mix of housing options, including second units to accommodate the needs of all household sizes and incomes.

<sup>4</sup> Growth Plan 1.2.1 Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure* and support transit viability.

<sup>5</sup> 2.2 Structuring growth in the city: integrating land use and transportation Policy 2 Growth will be directed to the Centres, Avenues, followed by criteria a to h, which Mr. Riley testified were all either met or were not applicable. In particular criterion b) states: concentrate jobs and people in areas well served by surface transit and rapid transit stations;

<sup>6</sup> 2.2.3 Avenues: reurbanizing arterial corridors Policy 3 c) i support and promote the use of transit; ii. contribute to the creation of a range of housing options in the community;

<sup>7</sup> Policy 4.5.2 a) . In Mixed Use Areas development will: a) create a balance of high quality commercial, residential, institutional and open space uses that reduces automobile dependency and meets the needs of the local community;