

DECISION AND ORDER

Decision Issue Date Wednesday, January 16, 2019

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): JESSIE TUITT

Applicant: VALDIMIR DOUNIN

Property Address/Description: 54 MARESFIELD DR

Committee of Adjustment Case File Number: 18 117404 ESC 41 MV

TLAB Case File Number: **18 141276 S45 41 TLAB**

Hearing date: Thursday, December 27, 2018

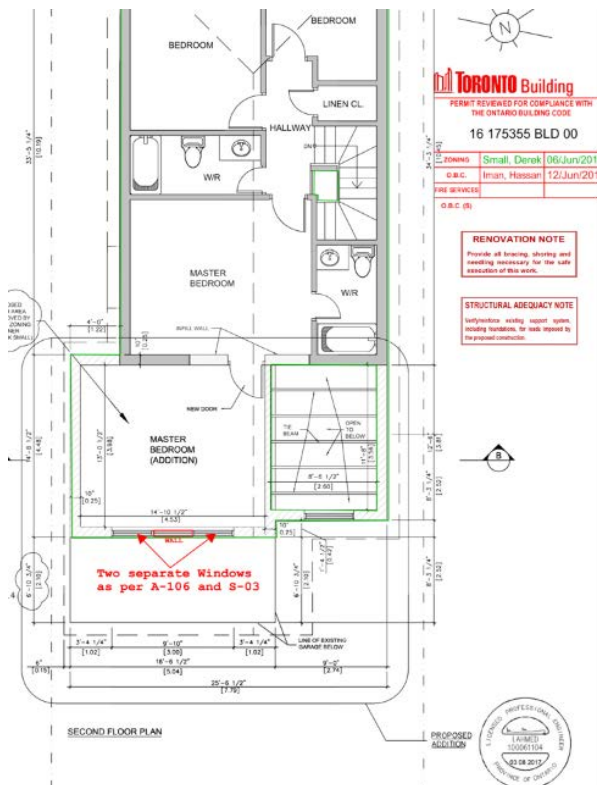
DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Representative
Valdimir Dounin	Applicant/Party	
Jessie Tuitt	Appellant	Ken Bradburn, Jeanine Tuitt

INTRODUCTION

Mr. Dounin wishes to add a two storey front porch and an additional second floor bedroom to his home at 54 Maresfield. To do so, he needs a minor variance from Bylaw 569-2013 of 194 m² total gross floor area when 183 m² is permitted.



BACKGROUND

Mr. Dounin, by his own admission, is not expert in the process of home renovations and building permits. He wishes to build a new larger front porch and extend the second floor forward towards the street. According to his architect's calculations, the porch adds about 10.5 m² and the new bedroom about 16.9 m² to the existing house's gross floor area. The Zoning Plan Examiner, Derek Small, has advised him that "the proposed floor area does not comply" and asked him to supply "further information". I infer this meant Mr. Dounin could satisfy Mr. Small in two ways — either reduce the gross floor area by 11 m² (194 m² minus 183 m²) or by supplying Mr. Small with a Committee of Adjustment decision giving him a minor variance approval. Mr. Dounin

chose **both** courses; he reduced the amount sought for and he also received an approval from the Committee of Adjustment on March 22, 2018. Ms. Tuitt appealed and so this matter came before the TLAB.

The reduced bedroom design (top left), under issued permit 16 175 355, shows the bedroom stopping 2.1 m from the south edge of the front of the garage and this reduces the gross floor area by 11 m². Mr. Dounin has started construction of the porch but has not uncovered the garage. He is waiting for the outcome of this appeal before he decides whether to proceed further.

MATTERS IN ISSUE

I must be satisfied that the applications meet all 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.

EVIDENCE

I heard from Mr. Dounin for himself and Jeanine Tuitt (Ms. Jessie Tuitt's daughter) and Mr. Bradburne for the Appellant, Ms. Jessie Tuitt. Mr. Bradburne is a contractor who has lived on Maresfield but now lives in the City of Markham.

ANALYSIS, FINDINGS, REASONS

Once Ms. Tuitt appealed, the decision of the Committee of Adjustment is set aside, and the matter starts afresh. This appeal first came on for hearing on October 23, 2018, before another member of the TLAB. She wrote that she was unable to complete the decision and ordered that it be heard before a different member of the TLAB. This case was assigned to me to hear. So, this case now continues at the TLAB and all parties start from square one, just like at the Committee of Adjustment on March 22, 2018.

As I set out in "matters in Issue", the burden is on Mr. Dounin to convince me that all for tests are met. He did not appear to understand that this requires him to refer to the Official Plan and zoning by-law. I offered him a chance to adjourn but he wished to proceed.

The Official Plan states that:

4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

...

c) heights, massing, scale and dwelling type of nearby residential properties;

No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood.

This means the massing of the proposed second storey must "respect and reinforce", the existing physical character of the neighbourhood, which I define as Maresfield Drive, Shady Hollow and Ponymill. It is not disputed that this is an area of single detached brick homes with generally one, one and a half or two car garages in front of the main front wall. There are some designs with a two storey front porch but only two photographs show a bedroom over the garage. I do not consider two homes out of about a hundred in the neighbourhood to form an "existing physical character" of bedrooms above garages. Indeed, I find the opposite, that the existing physical character is of a garage without second floor living area over that garage. (Please see

43 Maresfield, showing a typical garage on Maresfield¹.) However, photographs can only tell so much; a more accurate depiction would require that Mr. Dounin do some research into gross floor areas of other homes in the study area, which he did not do. This research is available from the City for a fee.

Since he has failed to meet his obligation, he does not meet the Official Plan test and the variance should not be authorized.

However, I am seeking a practical solution to this dispute, made more difficult by the fact Mr. Dounin has commenced construction under Permit 16 175 355, which does not represent his full intention, as he has appears to have ceased construction after putting in the foundations under the front porch.



Ms. Tuitt has stated that she does not oppose the second-floor master bedroom over the garage, but she does not want a two storey “wall” three feet from her lot line. But the two storey wall does not by itself seem to require any minor variance; it meets height and side yard setback limits and it is only when considered in conjunction with the bedroom that the gross floor area variance is triggered.

In my view, a just and practical result would be to allow Mr. Dounin to build **a one storey** enclosed front porch and his full **second storey** bedroom over the garage. I proposed a version of this compromise to the parties, but it was rejected because Mr. Dounin did not feel he should have to pay his architect to revise the plans. In any case, this solution probably does not require any minor variance and if so, I would have no role.

Accordingly, I am refusing the minor variance and the result is that Mr. Dounin may complete his half-finished project under that building permit, which will result in a structure without the “strip” and which no-one wants. If he wishes to have the whole second floor bedroom **plus a one storey front porch** and if he needs a minor variance and if he is willing to pay his architect to redraft such plans, I will reopen this hearing to

¹ Incidentally this shows that the garage at 43 forms a one storey “wall” with respect to its neighbour at 41 Maresfield.

grant any necessary minor variance. This would require going back to Mr. Small at the City Buildings Department and Mr. Small should be given sufficient time to do his job. If this is Mr. Dounin's intended course of action, he should advise the TLAB and Ms. Tuitt by February 1, 2019 and submit the new plans plus a new zoning notice to the TLAB by March 30, 2019. If this is unclear, he should write to the TLAB and copy Ms. Tuitt. Assuming no unexpected difficulties, I should be able to amend this order upon receipt of a simple email from Mr. Dounin plus those enclosures and I will amend the order granting any variance flagged by Mr. Small on condition that Mr. Dounin construct in accordance with those revised plans. Otherwise the final order below stands, and Mr. Dounin is at liberty to continue construction under the permit 16 175 355.

Decision and Order

The appeal is allowed, and the decision of the Committee of Adjustment is set aside. The variance is not authorized. However, I am willing to set aside this Decision and Order on the above terms, if Mr. Dounin so desires.

X

Ted Yao

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