

INTERIM DECISION

Decision Issue Date Wednesday, July 17, 2019

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SUKUMARAN SUNIL KUMAR

Applicant: ARBEN SHPATI

Property Address/Description: 777 WILSON HEIGHTS BLVD

Committee of Adjustment Case File Number: 18 173462 NNY 10 MV

TLAB Case File Number: **18 260947 S45 10 TLAB**

Hearing date: Friday, July 12, 2019

INTERIM DECISION DELIVERED BY TED YAO

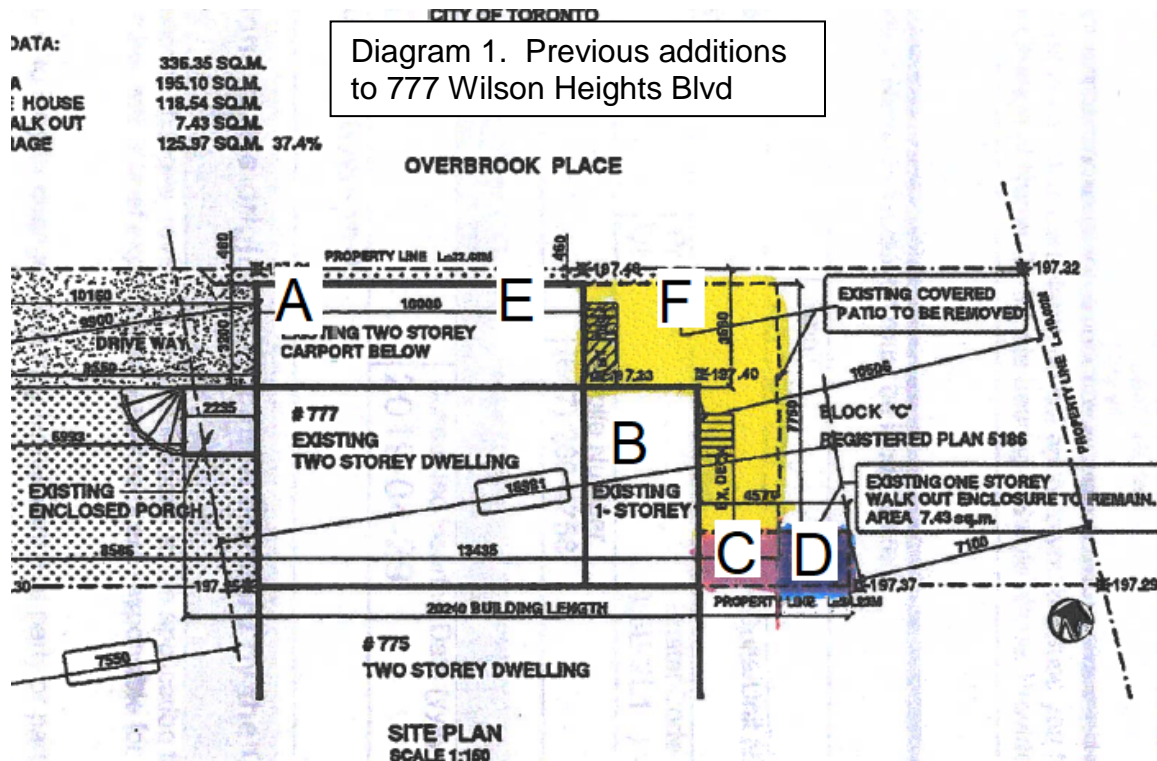
APPEARANCES

Name	Role	Representative
Sukumaran Kumar	Appellant	John Wenus
City of Toronto	Party	Marc Hardiejowski
Bruno Vivona	Participant	

This is a settlement based on the filing of an acknowledgement of an encroachment.

Sukumaran and Deepa Kumar purchased 777 Wilson Heights in 2016. At that time their lawyer advised that there were some surveying issues, but it was "alright" to go ahead with the purchase. After the deal closed, Mr. Kumar says he learned that a portion of his house encroaches on land belonging to his neighbour to the south, Bruno. Vivona, 775 Wilson Heights Blvd.

The Kumar house has a series of additions, which I label A to F, all built by the previous owner, Carmelo Pazzano.



- A carport converted to enclosed garage
- B rear single storey addition, pursuant to a 1981 building permit. Portion B encroaches 10.5 cm on Mr. Vivona's property
- C a further extension of B, part of which also encroaches on Mr. Vivona's property
- D a further extension of C, some of which may encroach on Mr. Vivona's property
- E a second story addition was added to the garage A.
- F a "patio" addition, an open-air structure, made of pillars and rafters, that counts as GFA (gross floor area).

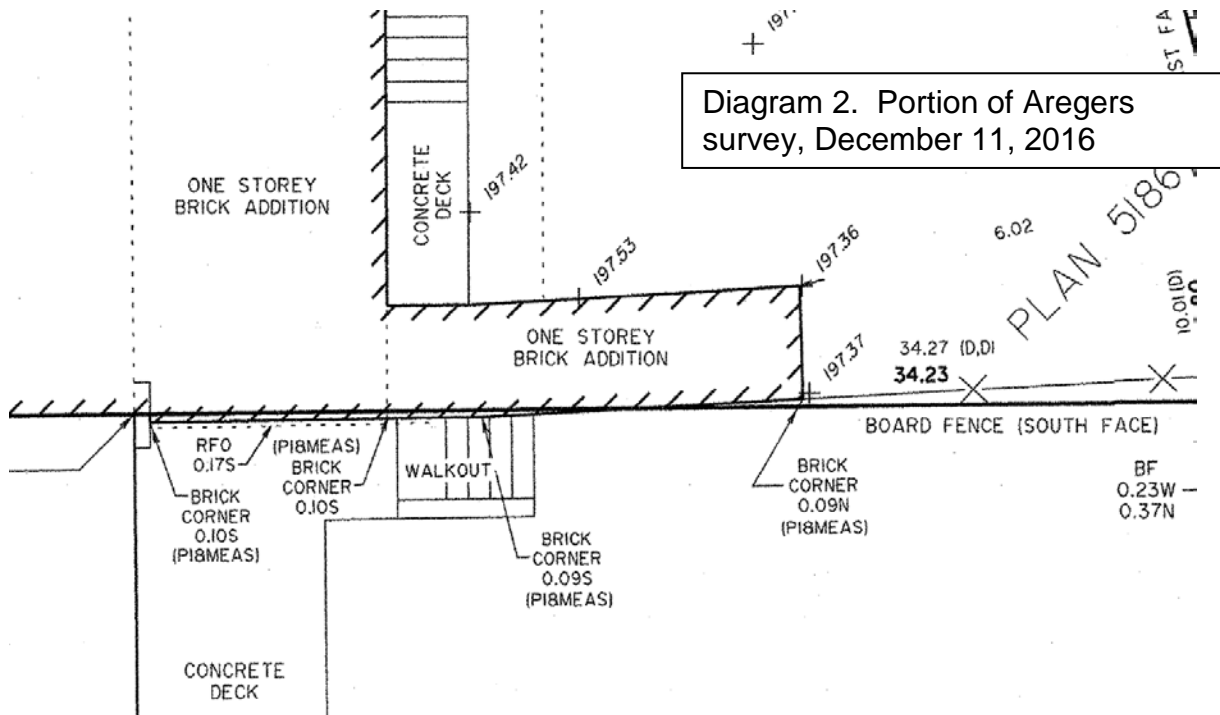
In an effort to "legalize" all these additions, the Kumars applied to the Committee of Adjustment for the following variances:

Table 1. Variances sought for 777 Wilson Heights from By-law 569-2013

		Required	Proposed
1	Lot coverage	35%	37.55
2	Building length	17 m	20.24 m
3	Rear yard setback	8.46 m	7.1 m
4	Canopy required setback	1.5 m	0.46 m
5	Encroachment for architectural pillars	.6 m	1.14 m
6	Side yard setback	1.5 m	0.46 m
7	Min. roof eave projection	0.3 m	0.1 m
8	Platforms	1.5 m	0.46 m

The Committee of Adjustment refused these variances on November 8, 2018, and Mr. Kumar appealed to the TLAB.

The encroachments

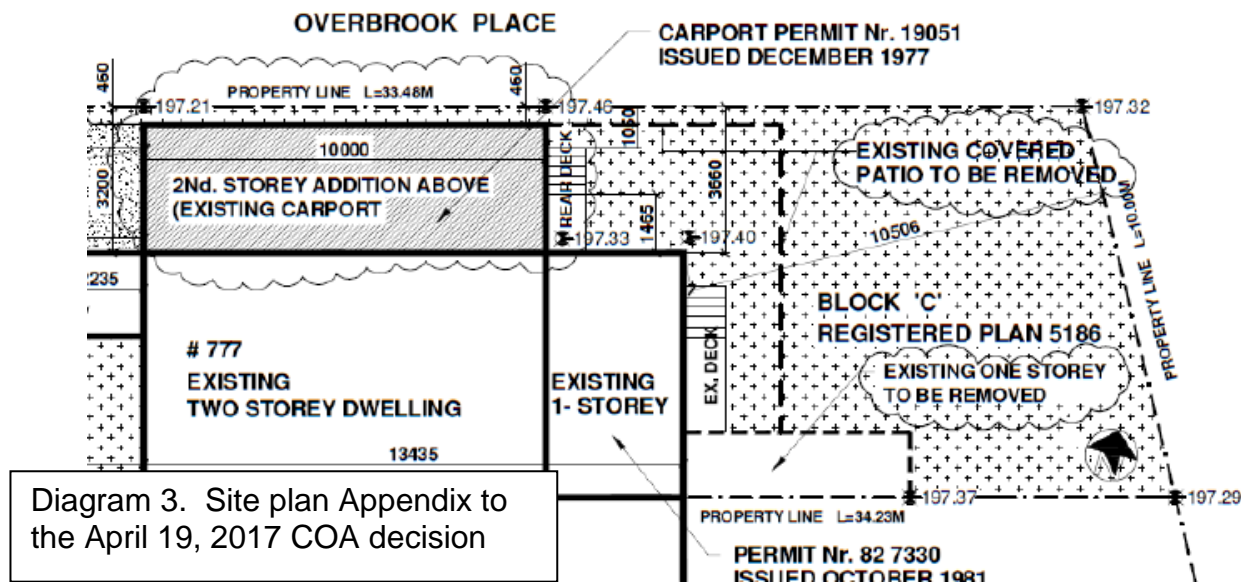


At the TLAB, Mr. Kumar amended his application to delete portion F, the patio structure, which cause the strikeout changes in Table 1 (variances 4, 5, 6, 7 and 8). On this basis, the City entered into Minutes of Settlement “not to oppose” the application. In support of his variance application Mr. Kumar presented a survey by Craig Aregers (Diagram 2, previous page) dated December 11, 2016¹, which shows addition B encroaches 10 cm (3.3 inches) and the encroachment continues in tapering fashion to the right. There is an encroachment in the opposite direction where the mutual fence encroaches on Mr. Kumar’s property. Mr. Vivona, the affected neighbour, commissioned a similar survey by Guido Papa, October 1, 2012, which shows the same information. Mr. Papa’s survey is not reproduced.

The planning evidence

I qualified Mr. Cieciora, Mr. Kumar’s planner, as able to give opinion evidence on land use planning. He testified that the remaining variances in Table 1 met the four tests under the *Planning Act*. The tests are whether the variances individually and cumulatively:

- 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.



I will not set out all his evidence, since this is a settlement, but he noted that this land is RM zoned, permitting a wide range of uses including semi-detached, and the variances

¹ Unfortunately, this portion of Mr. Aregers’ survey did not reproduce very clearly.

were small numerically. The building length, excluding the B, C, and D additions, is 13.53 m, “well below the maximum building length of 17 m” and all one storey.

The garage additional storey E

In his review of the history of the property, Mr. Cieciora noted a previous decision of the Committee of Adjustment dated April 19, 2017. It permitted the construction of a second storey addition to the garage E, **on condition that portions C,D and F be removed**. See diagram 3, previous page.

E has been constructed but C, D and F have not been removed.

I indicated to Mr. Wenus, counsel for Mr. Kumar, that I was not prepared to issue a positive ruling, as:

- the failure to remove C, D and F rendered the 2017 variance inoperable; and
- the B, and C additions not only exceeded coverage limits, but also exceeded property boundaries.

Mr. Kumar then instructed Mr. Wenus to enter into an encroachment agreement and register it on title.

I then allowed Mr. Wenus to reopen his case and amend his application to include the second-floor addition above the garage, E. This requires the following additional variances:

Table 2. Additional variances, for second storey addition over garage (E)			
		Required	Proposed
From 569-2013			
1	Eaves	No closer than 0.3 m to north lot line	0.16 m
2	Lot coverage	35%	35.2 %
3	Side yard setback	1.5 m	0.46 m
From Former North York Bylaw 7625²			
4	Side yard setback	Half the building height 3.9 m	0.46 m

² Because this relates back to 2017, when portions of the City-wide By-law were under appeal, By-law 7625, the former North York By-law, must be considered.

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5	Lot coverage	35%	35.2 %
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Mr. Cieciora testified that the tests for minor variances under the *Planning Act* were met; the coverage is subsumed in the previous coverage request and the eaves and setback face the Overbrook Avenue flankage where there is at least 3 m of boulevard space to the sidewalk.

Both the removal of F and the addition of E to this application are minor and I so find, pursuant to s. 45.(18.1.1) of the *Planning Act*.

I am prepared to authorize the variances in Tables 1 and 2 when the TLAB receives notification from Mr. Wengus (copied to the City of Toronto and Mr. Vivona) that an encroachment agreement satisfactory to Mr. Vivona has been registered and the patio addition F has been removed.

There is a time limit of six months, that is, January 15, 2020, at which time I would ask Mr. Wenus to report to the TLAB whether the conditions have been satisfied or not. If I do not hear from Mr. Wenus, or if he is unsuccessful, I will issue an Order to refuse the variances.

X



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