

INTERIM DECISION

Decision Issue Date Wednesday, March 31, 2021

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

Appellant(s): Roozbeh Rashed
Applicant(s): Rubinoff Design Group

Property Address/Description: 53 Joicey Blvd
Committee of Adjustment File
Number(s): 20 150151 NNY 08 MV (A0251/20NY)

TLAB Case File Number(s): 20 199944 S45 08 TLAB

Hearing date: Thursday, March 18, 2021

DECISION DELIVERED BY T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Rubinoff Design Group
Alternate Owner	Leila Raziee
Appellant	Roozbeh Rashed
Appellant's Legal Rep.	Jennifer Meader
Expert Witness	Franco Romano
Contractor	Saeed Koushan

INTRODUCTION

Roozbeh Rashed wishes to tear down a house at 53 Joicey and erect a new residence. To do so, he needs the following variances:

Table 1. Variances sought for 53 Joicey Blvd			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Max lot coverage	35%	38%
2	Building height	10 m	10.22 m
3	Wall height	7.5 m	9.68 m
4	Max. height of bottom front door	1.2 m above est. grade	1.26 m
5	Max. permitted building length	17 m.	18.29 m
6	Max. permitted building depth	19 m.	19.66 m.
7	Max. rear yard deck encroachment	2.5 m	4 m
8	North side yard setback	1.8 m	1.2 m
9	South side yard setback	1.8 m	1.2 m
10	Front stair width	2.0 m	2.13 m
Variances from former North York Zoning By-law 7625			
11	Building height	8.8 m	9.43 m

On Sept 10, the Committee of Adjustment approved the variances except for the two **side yard variances**, which it modified to permit Dr. Rashed to build within 1.5 m of his side yard lot lines. The Committee granted the balance of his application. A neighbour Ms. Niblett, the next door neighbour to the south, wrote a detailed letter of objection. Dr. Rashed appealed; and so, this matter comes before the TLAB.

EVIDENCE

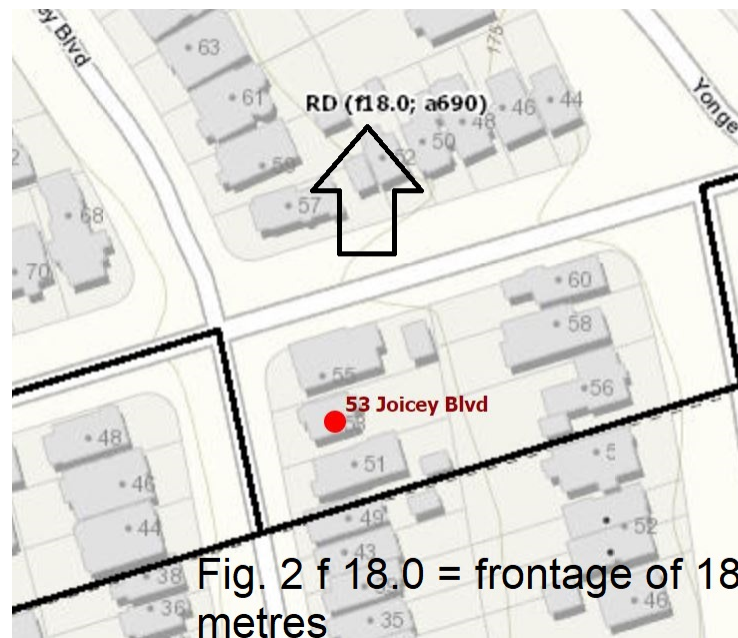
I heard from Franco Romano, Dr. Rashed's planner, whom I qualified as able to give opinion evidence in the area of land use planning. I did not hear from Ms. Niblett, who did not elect to participate in the hearing. Both Mr. Romano and I read her letter and considered the issues she outlined.

MATTERS IN ISSUE

The variances must meet all four tests under s. 45(1) of the *Planning Act*: that is, whether they 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

Analysis, findings, reasons



An appeal whether by the owner or a neighbour, resets the entire application back to zero and Dr. Rashed has the onus of proving that all eleven variances meet the tests under the *Planning Act*, not just the side yard variances. The fact that this matter was unopposed does not displace my obligation to independently ensure that Dr. Rashed has met the onus for this property.

Side yards

Mr. Romano was of the opinion that the proper side yard setback was 1.2 m, not 1.5 m. I agree with Mr. Romano but recognize that the plan examiner (Mr. Tayebi) and my tasks are different. Mr. Tayebi's conclusion is based on the intent of the zoning by-law section that provides for a sliding scale for side yards based on the **required** minimum frontage:

10.20.40.70 Minimum Front Yard Setback

(3) The required minimum side yard setback in the RD zone is:

...

(C) 1.2 metres if the required minimum lot frontage is 12.0 metres to less than 15.0 metres;

(D) **1.5 metres if the required minimum lot frontage is 15.0 metres to less than 18.0 metres;** . . . (my bold)

The actual frontage of 53 Joicey is 12.27 m and normally would be irrelevant for the “required frontage” which is a standard for a whole area of heterogeneously sized lots, wide and narrow. Mr. Tayebi considered the required frontage to be 18 m according to the notation on the interactive zoning map: f18.0 (f= frontage; please see inset Figure 2 above). However, there is an additional interpretive clause:

10.5.30.21 Lot Frontage Exemptions (1) Permitted Lot Frontage for Lawfully Existing Lots in the Residential Zone category, if the lawful lot frontage of a lawfully existing lot is less than the minimum lot frontage required by this By-law, that lawful lot frontage **is the minimum lot frontage** for that lawfully existing lot.

In other words, 53 Joicey’s “required” minimum” becomes 12.27 m, not 18 m. The intent of the first clause (10.20.40.70 (3)), in my view, is to not give an advantage to lots that are not “lawfully existing”, for example, undersized frontages created from by a new severance. Thus, if an 18 m lot were divided into two 9 m lots, those smaller lots would still be required to have the higher side yard requirements.

However, for purposes of building permit application, Mr. Tayebi’s interpretation is binding and neither Mr. Romano nor I can dispute that the required side yard is 1.8 m and that a variance is needed. However, my job, which is to interpret the **intent** of the zoning by-law is different from Mr. Tayebi’s; for example, I may consider broader planning policies as set out in the Official Plan.

Also, as part of my task, I am to look at the surrounding neighbourhood and ascertain if a 1.2 m setback “fits” and I find it does. For example, 55 Joicey, the adjacent house to the north, has a 1.2 m setback and 51 Joicey, Ms. Niblett’s house, to the south, has a 1.7 m side yard setback. This setback is 0.5 m more than Dr. Rashed proposes but still would require a variance based on the interpretation that the required minimum frontage is 1.8 m. Just a few houses away, 49 Joicey and 43-39 had “very tight” setbacks.

Mr. Romano stated:

Clearly when there is a [semidetached house] there is no side yard setback. And for detached dwellings we see that the side yard setbacks that are within. . . up to 1.2 m, up to 1.5 m, well represented both on the street and within the surrounding neighbourhood. And what’s being proposed at 1.2 to 1.24, as there is a . . .the walls are not the same

from front to rear on the site plan drawing. They fit in well with what is the prevailing side yard setback along both in the immediate context and the neighbourhood context.

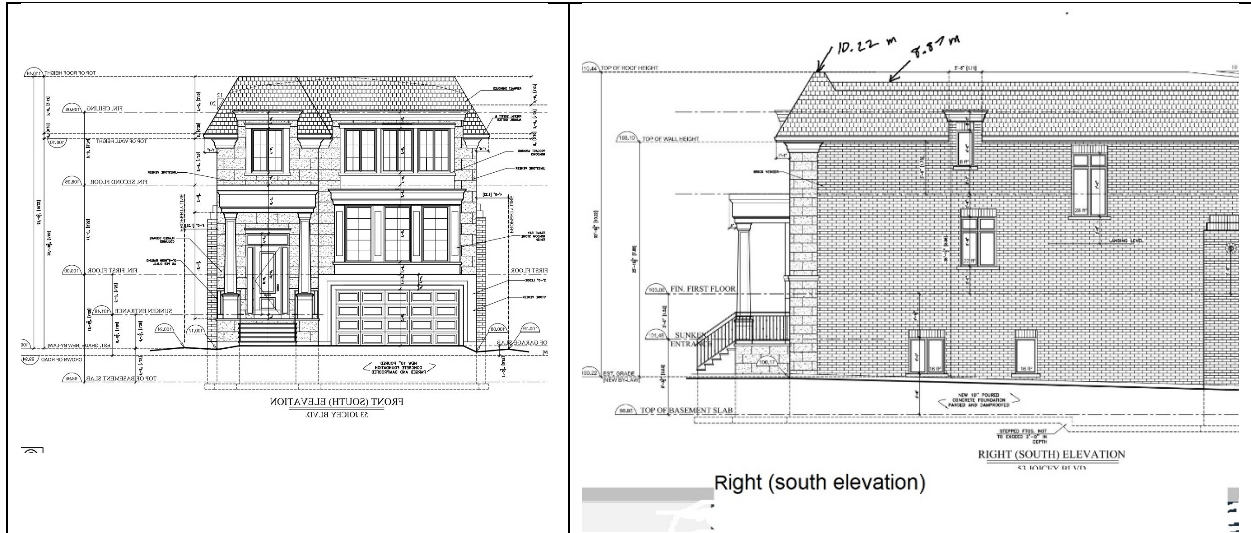
On this evidence, I accept that this variance meets the intent of the side yard provisions for the Official Plan and zoning, is minor and desirable for the appropriate development of the land.

Building height variance

Mr. Romano also analyzed this extensively. Number 53 Joicey was in the former City of North York whereas Number 51 Joicey (Ms. Niblett) was in the former City of Toronto. The City of Toronto permitted a number of residential house forms including semidetached, whereas North York only permitted detached. Also, Toronto had no limit on the number of stories whereas North York did. Notwithstanding the adjacent property to the north, 53 Joicey has three stories, whereas Ms. Niblett's adjacent property to south, in former Toronto, is two storey. Mr. Romano wrote: "Within the immediate context, 74% of dwellings have two storey building heights and 18.5% are three storeys. Dr. Rashed proposes two stories.

There are also differences in the manner of measurement; North York measuring from the road whereas Toronto relies on "established grade". The North York maximum is 8.8 m, which Mr. Romano testified was equivalent to 9.1 m if the slight rise from the road surface to the front wall bottom is taken out of the equation. This recalibrated variance equates to 0.33 m or 1.1 feet. Measuring from established grade, the variance is 0.22 m (8.7 inches). Even so, the majority of the roof falls below the Toronto maximum of 10 m.

Figure 3. Front and right side elevation indicating most of the roof is below the height limit



The reason for this is the peak of the street facing roof over the upper window. Mr. Romano said that the architect designed this because the building would otherwise look “squat”.

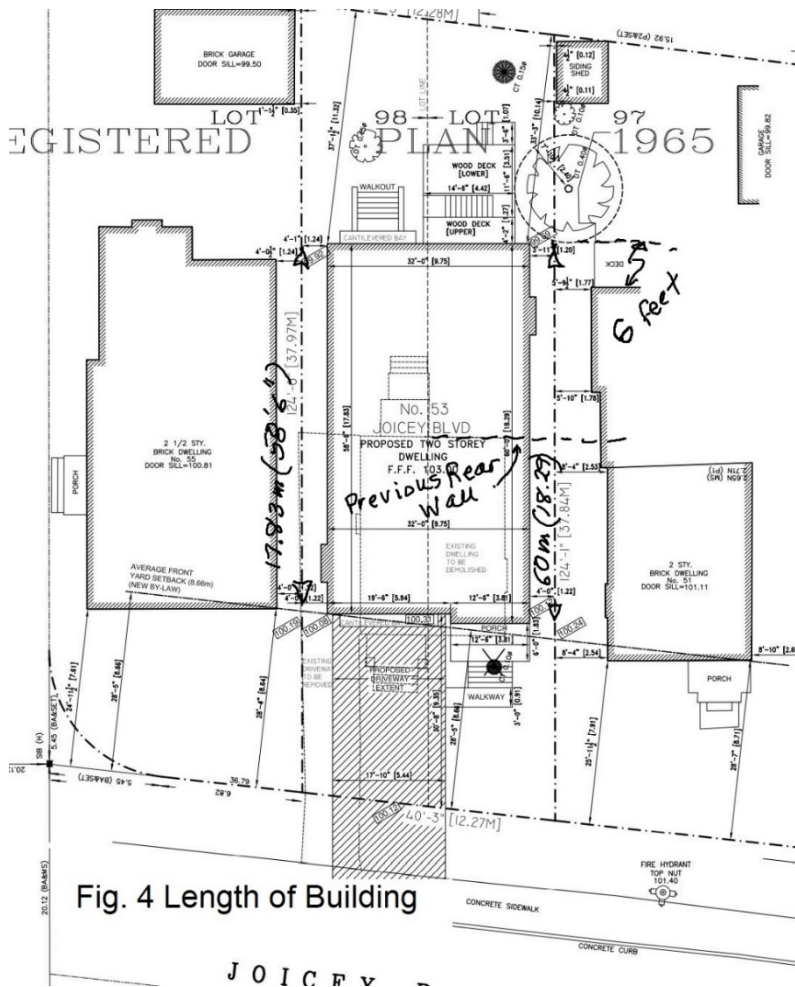


Fig. 4 Length of Building

Building Length

In her letter dated Sept 1, 2020 to the Committee of Adjustment, Ms. Niblett wrote:

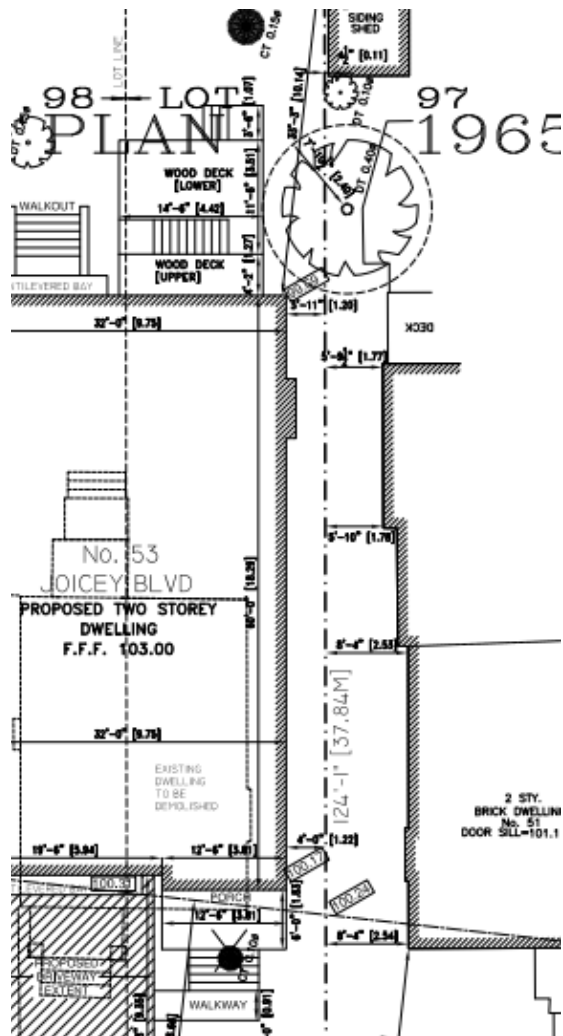
Requested variance # 5

Maximum building length from 17.0m to 18.29m (55ft 9in to 60.0ft)

- This is a difference of 1.29m or 4ft 3in or an increase of 7.6%
- this will allow the building to go beyond the end of my house and deck and will infringe on my privacy

The proposed structure will be 17.83 m long on the left side and 18.29 m long on the right side, the difference being a projection in the street façade of 53 Joicey nearest Ms. Niblett. It may be seen that Ms. Niblett’s present house extends to the rear 8.5 m (almost 28 feet) farther to the rear than Dr. Rashed’s present building (the house to be torn down). Dr. Rashed’s new house will extend past Ms. Niblett’s house by about 6 feet (Figure 4 above).

On the other hand , Ms. Niblett’s house is closer to the street than both Dr. Rashed’s present and proposed buildings. This is because the street slants from upper left to lower right, making the lots trapezoidal. Mr. Romano said that this is because each successive front wall was set back a little relative to the adjacent neighbour, there would be some additional extension in the back which he said was “a staggered condition but not substantially”. I find these two variances are reasonable and meet their statutory tests.



Windows facing Ms. Niblett

There are two upper level windows and one at first floor level, which is a little higher than Ms. Niblett’s first floor, owing to the two floors over garage design. The first floor window room is designated “library”. The other two windows give light to an ensuite bathroom and the stairway to the second floor, two rooms which Mr. Romano said were not likely to attract persons who wish to congregate for long periods of time. He did not think this created privacy concerns, and I accept that this is likely.

Tree

Ms. Niblett has a backyard tree which is within 6 m of the nearest corner of the foundation (please see inset to left.) According to Mr. Romano and Ms. Meader, when a building permit is to be issued, the Buildings Department requires a “construction plan”, indicating the location of building materials, the path for vehicles etc. It is at this point that Urban Forestry will be consulted and

will impose tree protection measures.

According to my reading of the numbers on the diagram to the left, there is a "T=0.40" which **may** mean a tree trunk of 40 cm. Under s. 813-15 of the Tree Bylaw, the City may stop work causing injury to a tree having a diameter of 30 cm or more. In addition, although I am also not sure of this, there is a number 2.4 m (7 feet 10 inches) in the circle around the tree, which suggests that the architect is suggesting a tree protection zone of this radius. Urban Forestry has attended this site and it did **not** suggest that an injury permit be obtained, which is the issue I have concern with. Ms. Meader (Dr. Rashed's lawyer) suggested that should Dr. Rashed injure a tree without a permit, he could be liable to a \$100,000 fine as well as civil penalties. In addition, Mr. Koushan, the contractor for Dr. Rashed, said he would do the "minimum" construction required. I do not think this is sufficient.

S. 1.1(a) states that the purpose of the *Planning Act*, among other goals, is to provide for planning processes that are "efficient", and s. 2 states there is a provincial interest in the coordination of planning activities of public bodies, which include the TLAB and the City Buildings Department. I do not think it would be good coordination if I did not have good information on whether excavation may injure Ms. Niblett's tree.

Accordingly, I will commit to authorizing the variances as individually and cumulatively meeting the *Planning Act* tests on the following happening: Dr. Rashed must obtain an arborist's report and Mr. Romano can give further evidence that based on the arborist's conclusions that the statutory tests are met for appropriate development without injuring Ms. Niblett's tree. I will give Dr. Rashed until May 15, 2021; if more time is needed could he please contact me at tlab@toronto.ca.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body