

## DECISION and ORDER

**Decision Issue Date**      Tuesday, April 13, 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 plus further affidavit of March 25, 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

On March 31, 2021, I issued an interim decision concerning a new house to be built by Dr. Rashed at 53 Joicey Blvd. To build that house, Dr. Rashed needs the variances in Table 1 below:

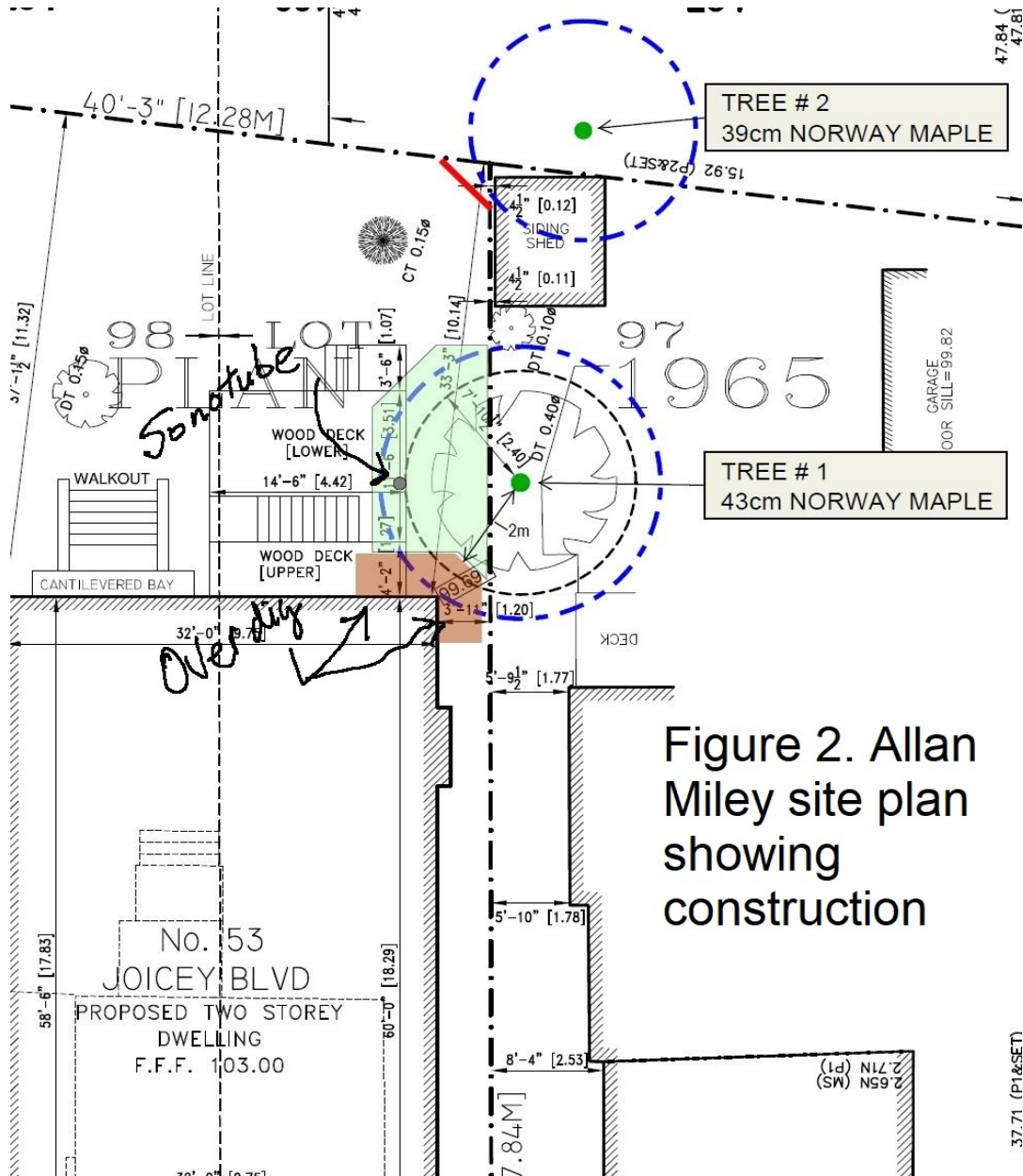
<b>Table 1. Variances sought for 53 Joicey Blvd</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Max lot coverage	35%	38%
2	Building height	10 m	10.22 m
3	Wall height	7.5 m	9.68 m
4	Max. height of bottom front door	1.2 m above est. grade	1.26 m
5	Max. permitted building length	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
<b>Variances from former North York Zoning By-law 7625</b>			
11	Building height	8.8 m	9.43 m

I asked for further evidence about Ms. Niblett's tree. Ms. Niblett, who did not attend the hearing, lives next door and owns the tree in question.

Concurrently, Dr. Rashed obtained an arborist's report from Allan Miley. Although there was no CV included in the report, Mr. Miley's business has been in existence for 46 years, so I accept that he is able to give opinion evidence on arboriculture. Mr. Miley set out a site plan showing the areas which might be impacted by construction (Figure 2). In addition, he stated that if proper procedures were followed including digging with a machine that did not cut tree roots, the tree would not experience significant injury. Mr. Miley stated in his report that:

The proposed injury is minor, it will not affect the health or stability of the tree. The tree will continue to thrive and the owners will continue to enjoy its presence. A Permit will be required to injure this tree.

On this basis, Mr. Romano concluded that one condition of approval should be that Dr. Rashed submit to the City of Toronto "a complete application to injure or remove a tree".



While “permit to injure or remove” is the usual language of Urban Forestry, in this case, removal is not an option, and from Mr. Miley’s report there should be no need to remove tree #1 (the 43 cm Norway maple). Second, an application by itself does not mean anything. I think the proper condition should be the **obtaining** of a permit to injure this tree, as was done by the owner in *11 Shudell Ave* (TLAB decision issued March 8, 2021). I have also deleted the current cost of planting in lieu as I do not believe this to be an appropriate condition. I have no right to bind what the City charges for tree planting. If this wording is not satisfactory would Ms. Meader contact TLAB at [tlab@toronto.ca](mailto:tlab@toronto.ca).

## DECISION AND ORDER

I authorize the variances in Table 1 on the following conditions:

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan (A), Front Elevation, Rear Elevation, Right Elevation and Left Elevation, all dated May 15, 2020 and prepared by Rubinoff Design Group.
2. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application.
3. The owner shall obtain a permit to injure a privately owned tree (i.e., Tree #1 in the Report of Allan Miley, March 25, 2021), pursuant to Chapter 813 of the Municipal Code, Article III Private Tree Protection.



X

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Ted Yao  
Panel Chair, Toronto Local Appeal Body