

**BUILDING CODE COMMISSION**

**IN THE MATTER OF** Subsection 24(1) of the *Building Code Act*, S.O. 1992, c. 23, as amended.

**AND IN THE MATTER OF** Sentences 11.4.2.5.(3) and 11.4.3.6.(1) of Regulation 403, as amended by O. Reg. 22/98, 102/98, 122/98, 152/99, 278/99, 593/99, 597/99, 205/00 and 283/01 (the “Ontario Building Code”).

**AND IN THE MATTER OF** an application by George and Christina Toulouse, property owners, for the resolution of a dispute with Fritz Enzlin, Deputy Chief Building Official, Municipality of Chatham-Kent, Ontario, to determine whether the performance level of the existing septic system, when considering a proposed second storey addition that will include a three piece ensuite bathroom, provides sufficiency of compliance with Sentences 11.4.2.5.(3) and 11.4.3.6.(1) of the Ontario Building Code at 5038 Dufferin Avenue, Wallaceburg, Municipality of Chatham-Kent, Ontario.

**APPLICANT** George and Christina Toulouse  
Property owners

**RESPONDENT** Fritz Enzlin  
Deputy Chief Building Official  
Municipality of Chatham-Kent

**PANEL** Frank Wright, Chair-Designate  
Doug Robinson  
Bill Fellner

**PLACE** Toronto, Ontario

**DATE OF HEARING** October 11, 2001

**DATE OF RULING** October 11, 2001

**APPEARANCES** George and Christina Toulouse  
**The Applicants**

Fritz Enzlin  
Deputy Chief Building Official  
Municipality of Chatham-Kent  
**The Respondent**

## **RULING**

### **1. The Applicant**

George and Christina Toulouse, property owners, have applied for a building permit under the *Building Code Act*, S.O. 1992, c. 23, as amended and are proposing to construct an addition to their dwelling at 5038 Dufferin Avenue, Wallaceburg, Municipality of Chatham-Kent, Ontario.

### **2. Description of Construction**

The Applicants are proposing to construct an addition to the second floor of their existing residential (Group C occupancy) dwelling. The proposed construction would enlarge the master bedroom and include a three piece ensuite washroom. This would increase the total number of plumbing fixture units in the building from 11 to 17 and would generate a total daily design sewage flow of 1600 litres per day.

The Applicants are not proposing any changes or upgrades to the existing sewage system which was installed in 1970. The existing sewage system is described by the Respondent as a conventional Class 4 sewage treatment facility, comprised of a 600 gallon tank and approximately 250 ft of weeping tile in 5 runs. This description is based on an earlier Certificate of Approval issued for the existing system. The site itself is relatively flat with a percolation time for the native soil of approximately 30 minutes.

The construction in dispute involves the working capacity of the existing septic system in light of the proposed addition to the building and the resulting increase in total daily design flow.

### **3. Dispute**

The issue at dispute between the Applicant and Respondent is whether the performance level of the existing septic system, when considering the proposed addition that includes a three piece bathroom, provides sufficiency of compliance with Sentences 11.4.2.5.(3) and 11.4.3.6.(1) of the Ontario Building Code (OBC).

Sentence 11.4.2.5.(3) sets out the situations that would reduce the performance level of an existing dwelling. These situations include an increase in the number of bedrooms, an addition of more than 15% to the building area of an existing dwelling and an increase in the number of the plumbing fixtures that, together or alone, would result in a daily design sewage flow in excess of the designed capacity for any component of the existing sewage system. In other words, if the resultant increase in the daily design sewage flow, due to any of the above conditions, exceeds the capacity of one component or the whole septic system, the performance level of the dwelling is reduced.

If the performance level of a dwelling is reduced, Sentence 11.4.3.6.(1) requires up-grading of an existing septic system to comply with the requirements of Part 8 of the OBC. This sentence applies if one of the conditions specified in Sentence 11.4.2.5.(3) leads to a reduction in the performance level of an existing dwelling.

In the present case the addition to the subject dwelling includes a three piece ensuite bathroom which would increase the total number of plumbing fixture units from 11 to 17. Therefore, at issue is whether the existing septic system will sufficiently comply with the requirements set out in the Building Code or whether the system will require upgrading.

#### 4. Provisions of the Ontario Building Code

##### 11.4.2.5. Sewage Systems

(3) The *performance level* of an existing *dwelling unit* is reduced where *proposed construction* which,

- (a) increases the number of bedrooms in the *dwelling unit*,
- (b) exceeds 15% of the finished area of the *dwelling unit*, or
- (c) adds new *plumbing fixtures to the dwelling unit*,

will result in the total daily design *sanitary sewage* flow of the *dwelling unit*, calculated in accordance with Article 8.2.1.3., exceeding the capacity of any component of a *sewage system* serving the *dwelling unit*.

##### 11.4.3.6. Sewage Systems

(1) Where the *performance level* of an existing *building* is reduced under Article 11.4.2.5., upgrading of a *sewage system* which is adversely affected by the *construction*, increase in *occupant load*, increase in the total daily design *sanitary sewage* flow or change in amount or type of *sanitary sewage* shall be required in conformance with Part 8.

#### 5. Applicant's Position

The Applicants advised that they are seeking to construct an addition to the second floor of their existing dwelling. This addition would include a three piece ensuite bathroom. They submitted that when they applied for a permit for the anticipated construction, municipal officials advised that the existing septic system would require upgrading.

The Applicants argued that, while there may be an increase in the number of plumbing fixtures, there would continue to be only two people living in the building and that no additional sewage would be generated. The washroom on the second floor, they argued, is merely a convenience. They continued by submitting that they had raised a family in the existing dwelling and had never encountered any problems with respect to the septic system. In their opinion, the current capacity has always been adequate and they do not agree with the contention that, simply by adding some plumbing fixtures, the system will become overloaded.

In summation they argued that the existing system would continue to be sufficient to accommodate the daily sewage flow from their dwelling. They maintained their assertion that no additional sewage would result from the proposed addition.

#### 6. Respondent's Position

The Respondent submitted that, when applying the criteria outlined in Part 11 of the Building Code, the proposed addition will decrease the performance level of the building because of the additional fixture units proposed. He agreed that the existing system is not failing but emphasized that the provisions of the Code are clear in this respect.

The Respondent advised the Commission that, based on the specifications outlined in the Certificate of Approval that was issued in 1970, the total daily design flow calculated based on the requirements of

Part 8 will exceed the capacity of the existing system. As such, he was unable to issue a permit for the proposed construction.

**7. Commission Ruling**

It is the decision of the Building Code Commission that the performance level of the existing septic system, when considering a proposed second storey addition that will include a three piece bathroom, does not provide sufficiency of compliance with Sentences 11.4.2.5.(1), 11.4.2.5.(3) and 11.4.3.6.(1) of the Ontario Building Code at 5038 Dufferin Avenue, Wallaceburg, Municipality of Chatham-Kent, Ontario.

**8. Reasons**

1. The total daily design flow, when considering the increase in fixture units from 11 to 17, would exceed the design capacity for the existing system. As a result, the additional fixture units proposed in the present case would decrease the performance level of the existing building.

Dated at Toronto this **11th** day in the month of **October** in the year **2001** for application number **2001-54**.

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Mr. Frank Wright, Chair-Designate

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Mr. Doug Robinson

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Mr. Bill Fellner