



**COMMITTEE OF ADJUSTMENT
OF THE CITY OF OTTAWA**

**DECISION
MINOR VARIANCE / PERMISSION**
(Section 45 of the *Planning Act*)

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| File No.: | D08-02-22/A-00236 |
| Owner(s): | Dennis and Joni Sabourin |
| Location: | 6465 Fernbank Road |
| Ward: | 21 - Rideau-Goulbourn |
| Legal Description: | Part of Lot 21, Concession 10 Geographic Township of Goulbourn |
| Zoning: | RU |
| Zoning By-law: | 2008-250 |

Notice was given and a Public Hearing was held on **October 5, 2022**, as required by the *Planning Act*.

PURPOSE OF THE APPLICATION:

The Owners want to construct an open pergola to the rear of the existing accessory building for their home-based business, as shown on plans filed with the Committee. The existing detached dwelling, garage, and an accessory building are to remain.

RELIEF REQUIRED:

The Owners require the Authority of the Committee for a Minor Variance from the Zoning By-law to permit a home-based business in an accessory building to have a gross floor area (GFA) of 446 square metres, whereas the By-law permits a home-based business in an accessory building to have a maximum gross floor area (GFA) of 150 square metres.

The application indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING:

The Panel Chair administered an oath to Joni Sabourin, one of the Owners of the property, who confirmed that the statutory notice posting requirements were satisfied.

Also in attendance was John Smit, Agent for the Owners, who provided the Committee with a full presentation, with reference to a location plan, aerial images, photographs, and a site plan. He also briefly summarized the development history on the site and confirmed that a building permit had been issued for the existing accessory building as a farm storage building, though it is now used for a gym business serving local clients.

Mr. Smit also referred the Committee to section 2.2.2 of the New Official Plan, which supports the diversification of rural economic development and acknowledges the challenges to business development in the rural area, including “overly prescriptive definitions of home occupations.” In addition, Mr. Smit noted that section 4.2.1(5) permits home-based businesses where residential dwellings are permitted, provided there are no adverse impacts, and indicated that in the case the neighbours were supportive of the application. He also noted that his client was not seeking any additional variances from the zoning provisions related to home-based businesses, apart from the requested increase in gross floor area.

In response to a question from the Chair regarding the size of the existing accessory building and its capacity, Mr. Smit submitted that the business has equipment available for up to 10 clients, though generally only three to five clients would occupy the building at any one time.

The Committee also heard from Sean Harrigan of the City’s Planning, Real Estate and Economic Development Department, who outlined the City’s objections to the application. Mr. Harrigan explained that the applicants had first approached the City regarding a proposed 450 square metre athletic facility in 2017. At that time, the City advised that this would not be considered a home-based business, and that a Zoning By-law Amendment and Site Plan Control application would be required. Months later, a building permit was issued for a farm storage building. It was Mr. Harrigan’s position that the existing building had been purpose-built as an athletic facility.

Mr. Harrigan also submitted that the existing gym business could not be considered a home-based business within the meaning of the Zoning By-law, on the basis that it is neither secondary nor subordinate to the principal residence on the property. In this regard, he noted that the accessory building has its own well and septic system, as well as a large, dedicated parking area, and that the gross floor area is three-times greater than the Zoning By-law would permit for all home-based business on a property. He also questioned whether the business complied with the maximum number of on-site, non-resident employees permitted for home-based businesses, as well as the zoning requirement that the operators of the business reside in the dwelling. Finally, in addressing the proposed pergola addition, Mr. Harrigan indicated that the use of the pergola for outdoor recreational activity would be prohibited by the New Official Plan, except if considered through a Zoning By-law Amendment application.

It was also noted that a Site Plan Control application would be required regardless of the Committee’s decision.

In response to a question from the Committee regarding Ontario Building Code compliance, Mr. Harrigan confirmed that the existing building had not been issued a building permit for its present use, and that the necessary reviews and inspections for Ontario Building Code compliance would occur in conjunction with the Site Plan Control application process.

Sam Sabourin, a relative of the Owners, also addressed the Committee and spoke to the relatively small scale of the business and its operations and explained that the intent of the proposed pergola was to provide a comfortable outdoor space for the benefit of clients. He also submitted that the business is an asset to the community and a much-needed resource.

The Committee also heard from Tony Faranda of 6468 Fernbank Road and Sarah Kennedy of 2185 Conley Road, who highlighted their support for the application and elaborated on its benefits to the community. They emphasized that the business had generated no negative impacts, that it was a small-scale operation, and that it had become essential to health and wellbeing of the community.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION REFUSED

The Committee considered any written and oral submissions relating to the application in making its Decision.

The Committee has the power to authorize a minor variance from the provisions of the Zoning By-law if, in its opinion, the application meets all four requirements under subsection 45(1) of the *Planning Act*. It requires consideration of whether the variance is minor, is desirable for the appropriate development or use of the land, building or structure, and whether the general intent and purpose of the Official Plan and the Zoning By-law are maintained.

Based on the evidence, the Committee is not satisfied that the requested variance meets all four requirements under subsection 45(1) of the *Planning Act*.

The Committee notes that the City objects to the application and that its Planning Report raises numerous significant concerns, concluding that: "the proposed variance is not minor in nature nor desirable development. Increasing the permitted maximum GFA for a home-based business to nearly triple the permitted maximum is not minor in nature nor maintains the general intent of the Zoning By-law which dictates that the cumulative GFA of all home-based businesses on a lot cannot exceed 150 square metres. The proposed minor variance is not desirable development as the proposed variance seeks to legalize an existing athletic facility, which is currently not a permitted land use."

Considering the circumstances, the Committee finds that the requested variance is not desirable for the appropriate development or use of the land, building or structure on the property, and relative to the neighbouring lands. In this regard, the Committee is of the opinion that, from a planning and public interest point of view, an athletic facility use in

this location would be more appropriately considered through a Zoning By-law Amendment application, as well as through the mandatory Site Plan Control and building permit processes. In addition, the Committee finds that the athletic facility use is not compatible with its residential context, and therefore the requested variance does not maintain the general intent and purpose of the Official Plan. The Committee also finds that the requested variance does not maintain the general intent and purpose of the Zoning By-law because the athletic facility use was not demonstrated to be secondary or subordinate to the residence, contrary to the definition of a home-based business. Moreover, the Committee finds that the requested variance is not minor because, at 446 square metres, the athletic facility would have the capacity to generate significant traffic and noise and to adversely impact abutting properties, notwithstanding that the scale of operations may be limited at present.

The Committee therefore does not authorize the requested variance.

NOTICE OF RIGHT TO APPEAL:

To appeal this decision to the Ontario Land Tribunal (OLT), a completed appeal form along with payment must be received by the Secretary-Treasurer of the Committee of Adjustment by **November 3, 2022**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 CentrepoinTE Drive, 4th floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The OLT has established a filing fee of \$400.00 per type of application with an additional filing fee of \$25.00 for each secondary application. Payment can be made by certified cheque or money order made payable to the Ontario Minister of Finance, or by credit card. Please indicate on the Appeal Form if you wish to pay by credit card. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at cofa@ottawa.ca.

Only individuals, corporations and public bodies may appeal Decisions in respect of applications for consent to the OLT. A notice of appeal may not be filed by an unincorporated association or group. However, a Notice of Appeal may be filed in the name of an individual who is a Member of the Association or group on its behalf.

Please note that there are no provisions for the Committee of Adjustment or the OLT to extend the statutory deadline to file an appeal. If the deadline is not met, the OLT does not have the authority to hold a hearing to consider your appeal.

**DECISION SIGNATURE PAGE
PAGE DE SIGNATURE DE LA DÉCISION**

File No. / Dossier n°: D08-02-22/A-00236
Owner(s) / Propriétaire(s): Dennis and Joni Sabourin
Location / Emplacement: 6465 Fernbank Road

We, the undersigned, concur in the decision and the reasons set out by the Committee of Adjustment.

Nous, soussignés, souscrivons à la décision et aux motifs rendus par le Comité de dérogation.

“Fabian Poulin”

**FABIAN POULIN
VICE-CHAIR / VICE-PRÉSIDENT**

“Terence Otto”

**TERENCE OTTO
MEMBER / MEMBRE**

“Steven Lewis”

**STEVEN LEWIS
MEMBER / MEMBRE**

“Martin Vervoort”

**MARTIN VERVOORT
MEMBER / MEMBRE**

Declared interest / Intérêt déclaré

**JOCELYN CHANDLER
MEMBER / MEMBRE**

I certify that this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa.

Je certifie que celle-ci est une copie conforme de la décision rendue par le Comité de dérogation de la Ville d'Ottawa.

Date of Decision / Date de la décision
October 14, 2022 / 14 octobre 2022



Michel Bellemare
Secretary-Treasurer / Secrétaire-trésorier