

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

Date of Decision:	November 25, 2022
File No.:	D08-02-22/A-00292
Owner:	Mohammed Ibrahim
Location:	284 Dovercourt Avenue
Ward:	15-Kitchissippi
Legal Description:	Lot 23, Registered Plan 310
Zoning:	R3S
Zoning By-law:	2008-250
Hearing Date:	November 16, 2022

PURPOSE OF THE APPLICATION

- [1] The Owner has constructed a long semi-detached dwelling that is not in conformity with the Zoning By-law, as shown on the plans filed with the Committee.

RELIEF REQUIRED

- [2] The Owner requires the Authority of the Committee for a Minor Variance from the Zoning By-law to permit an increased building height of 8.2 metres, whereas the By-law permits a maximum building height of 8 metres.
- [3] The application indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

- [4] The Panel Chair administered an oath to Peter Hume, Agent for the Owner, who confirmed that the statutory notice posting requirements were satisfied.
- [5] When asked by the Panel Chair to explain how construction had occurred that was not in conformity with the Zoning By-law, Mr. Hume indicated that there was a discrepancy in the location of the ground floor as identified on the grading plan and the architectural drawings submitted with the building permit application.
- [6] In his presentation, Mr. Hume referred the Committee to elevation drawings and streetscape images along Dovercourt Avenue and explained that the increased

height related to the location of the peaked roof, and that there would be no change to the location of windows or the overall impact of the building within its context if the roofline was altered to comply with the Zoning By-law.

- [7] Responding to the same question posed to Mr. Hume, Margot Linker of the City's Planning, Real Estate and Economic Development confirmed Mr. Hume's understanding, and indicated that the discrepancy between plans was missed in the City's review of the building permit application.
- [8] Mr. Hume also confirmed that the surveyed height of the completed long semi-detached dwelling was identified as 8.2 metres based on the finished average grade.
- [9] The Committee also heard from Peggy Morris of 282 Dovercourt Avenue, who expressed concerns with the number of dwelling units within the building, changes to the grading on site that had occurred during construction, and other possible discrepancies between the plans filed and the finished building, specifically as it related to stair projections and the locations of doors.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED

- [10] The Committee considered any written and oral submissions relating to the application in making its Decision.
- [11] 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.
- [12] Based on the evidence, the Committee is satisfied that the requested variance meets all four requirements under subsection 45(1) of the *Planning Act*.
- [13] The Committee notes that the City's Planning Report raises "no concerns" regarding the increased building height, concluding that "Staff do not anticipate any adverse impacts from a 0.2 metre height increase on the character of the street."
- [14] The Committee also notes that the application seeks to legalize, after the fact, an already-built structure that does not comply with zoning regulations. The Committee does not condone the practice of building first and asking for permission later. An owner who does so runs the risk, like any other applicant, of having their application denied. The additional risk if the Committee refuses to authorize a minor variance for an already-built, non-compliant structure could be the requirement to either bring it into compliance or remove it, regardless of any cost or hardship to the owner. However, whether the proposal has already been built does not factor into the Committee's decision, either negatively or favourably. The Committee must consider each application on its merits, based on the

evidence and according to the statutory four-part test. The *Planning Act* does not set out a fifth test as to whether an owner has contravened municipal regulations relating to construction. Instead, it is the City's exclusive role to address construction-related concerns and enforce its own by-laws. The Committee has no jurisdiction over such matters.

- [15] Additionally, the Committee notes that no compelling evidence was presented that the variance would result in any unacceptable adverse impact on neighbouring properties.
- [16] Considering the circumstances, the Committee finds that, because the increased height does not compromise the fit of the development within the neighbourhood, the requested variance is, from a planning and public interest point of view, desirable for the appropriate development or use of the land, building or structure on the property, and relative to the neighbouring lands.
- [17] The Committee also finds that the requested variance maintains the general intent and purpose of the Official Plan because it respects the character of the neighbourhood that includes many examples of buildings with peaked roofs.
- [18] In addition, the Committee finds that the requested variance maintains the general intent and purpose of the Zoning By-law because the increased building height is imperceptible from street level and the pattern of orderly development in the area is preserved.
- [19] Moreover, the Committee finds that the requested variance is minor because it will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [20] THE COMMITTEE OF ADJUSTMENT therefore authorizes the requested variance, **subject to** the relief applying to the existing long semi-detached dwelling known municipally as 284 Dovercourt Avenue and being restricted to the life of this building only.

"John Blatherwick"
JOHN BLATHERWICK
VICE-CHAIR

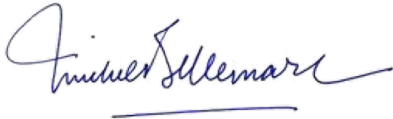
"Stan Wilder"
STAN WILDER
MEMBER

"Heather MacLean"
HEATHER MACLEAN
MEMBER

"Bonnie Oakes Charron"
BONNIE OAKES CHARRON
MEMBER

"Michael Wildman"
MICHAEL WILDMAN
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **November 25, 2022**.



Michel Bellemare
Secretary-Treasurer

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 **December 15, 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 Ontario Land Tribunal 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 Ontario Land Tribunal. 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.

There are no provisions for the Committee of Adjustment or the Ontario Land Tribunal 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.

Ce document est également offert en français.

Committee of Adjustment | Comité de dérogation

City of Ottawa | Ville d'Ottawa

[Ottawa.ca/CommitteeofAdjustment](https://ottawa.ca/CommitteeofAdjustment) | [Ottawa.ca/Comitedederogation](https://ottawa.ca/Comitedederogation)

cofa@ottawa.ca | cded@ottawa.ca

613-580-2436