

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

Date of Decision:	March 24, 2023
File No(s):	D08-02-23/A-00036
Owner(s):	Ali Aleali & Oksana Zbyranyk
Location:	435 Echo Drive
Ward:	17 – Capital
Legal Description:	Part of Lot 10, Block 'K', Registered Plan 102
Zoning:	R4UD
Zoning By-law:	2008-250
Hearing Date:	March 15, 2023

PURPOSE OF THE APPLICATION

- [1] The Owners want to construct a three-storey detached dwelling with a front-facing balcony and a rooftop terrace, as shown on plans filed with the Committee. The existing two-storey detached dwelling is to be demolished.

RELIEF REQUIRED

- [2] The Owners require the Authority of the Committee for Minor Variances from the Zoning By-law as follows:
- a) To permit a reduced rear yard setback equal to 25.3% of the lot depth (7.6 metres), whereas the By-law requires a minimum rear yard setback equal to 30% of the lot depth (9.1 metres).
 - b) To permit an increased balcony projection of 2.2 metres, whereas the By-law permits a maximum balcony projection of 1.2 metres.
 - c) To permit an increased total rooftop access area of 12.3 square metres, whereas the By-law permits a maximum total rooftop access area of 10.5 square 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 Acting Panel Chair administered an oath to Simran Soor, Agent for the Owners, who confirmed that the statutory notice posting requirements were satisfied.
- [5] Ms. Soor indicated that the name of one of the Owners was spelled incorrectly on the public notice and should be corrected to read as follows:
- ~~Oskana Zybranyk~~ **Oksana Zbyranyk**
- [6] The Committee heard a presentation from Ms. Soor.
- [7] Murray Chown, also acting as Agent for the Owners, responded to questions from the Committee, explaining that a reduction in rear yard setback was requested to accommodate a building form that meets the needs of the Owners.
- [8] Olenka Galadza, resident of 160 McGillivray Street, expressed concerns with the application, highlighting the impact that the proposed development would have on the character of the neighbourhood, which largely comprises older buildings and architecture.
- [9] John Dance, Chair of the Old Ottawa East Community Association, also raised concerns regarding the incremental impact of reduced rear yards being permitted for new development throughout the area, and its adverse effect on the community.
- [10] City Planner Basma Alkhatib was also in attendance.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED IN PART

- [11] The Committee considered all written and oral submissions relating to the application in making its Decision.
- [12] 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.
- [13] Based on the evidence, the Committee is satisfied that variances b) and c) meet all four requirements under subsection 45(1) of the *Planning Act*.
- [14] The Committee notes that the City's Planning Report raises "no concerns" regarding the application.

- [15] The Committee finds that no evidence was presented to suggest that variances (b) and (c) would result in any unacceptable adverse impact on neighbouring properties.
- [16] Considering the circumstances, the Committee finds that variances (b) and (c) are, 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 because the proposed balcony and rooftop access fit well in the neighbourhood.
- [17] The Committee also finds that variances (b) and (c) maintain the general intent and purpose of the Official Plan because the proposed balcony and rooftop access respect the character of the neighbourhood, which features examples of balconies and private amenity areas along the streetscape.
- [18] In addition, the Committee finds that variances (b) and (c) maintain the general intent and purpose of the Zoning By-law because the proposed balcony and rooftop access represent orderly development on the property that is compatible with the surrounding area.
- [19] Moreover, the Committee finds that variances (b) and (c) are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [20] In considering variance (a), however, two of the four Members of the Committee that heard the application (Members B. Oakes Charron and S. Wilder) are not satisfied that this requested variance meets the four tests under subsection 45(1) of the *Planning Act*. Pursuant to the Committee's *Rules of Practice and Procedure*, any variance on which there is a tie vote is deemed to be refused.
- [21] Members Oakes Charron and Wilder find that, from a planning and public interest point of view, variance (a) is not desirable for the appropriate development or use of the land, building or structure on the property, and relative to the neighbouring lands, noting that an alternative design with a complying rear yard setback would be more sensitive to the surrounding neighbourhood.
- [22] In addition, Members Oakes Charron and Wilder find that insufficient evidence was presented to rationalize variance (a) and to demonstrate that the general intent and purpose of the Zoning By-law is maintained.
- [23] Conversely, Acting Panel Chair Michael Wildman and Member Heather MacLean find that variance (a) 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 because the proposal fits well with the surrounding neighbourhood.

- [24] Acting Panel Chair Wildman and Member MacLean also find that variance (a) maintains the general intent and purpose of the Official Plan because the proposal respects the character of the neighbourhood.
- [25] In addition, Acting Panel Chair Wildman and Member MacLean find that variance (a) maintains the general intent and purpose of the Zoning By-law because the proposal represents orderly development on the property that is compatible with the surrounding area.
- [26] Moreover, Acting Panel Chair Wildman and Member MacLean find that variance (a) is minor because it will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general, taking note of the evidence presented of similar rear yards on adjacent properties.
- [27] THE COMMITTEE OF ADJUSTMENT therefore authorizes variances (b) and (c), **subject to** the location and size of the proposed construction being in accordance with the plans filed, Committee of Adjustment date stamped February 17, 2023, as they relate those requested variances.
- [28] THE COMMITTEE OF ADJUSTMENT does not authorize variance (a).

Absent
JOHN BLATHERWICK
VICE-CHAIR

"Stan Wilder"
STAN WILDER
MEMBER

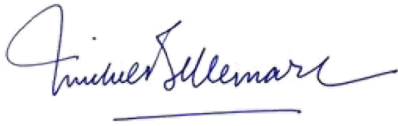
"Heather MacLean"
HEATHER MACLEAN
MEMBER

"Bonnie Oakes Charron"
BONNIE OAKES CHARRON
MEMBER

"Michael Wildman"
MICHAEL WILDMAN
ACTING CHAIR

Members H. MacLean and M. Wildman dissent on the refusal of variance a), finding that the rear yard area would be sufficient, and would remain consistent with the surrounding lots despite a 1.5 m reduction in setback.

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **March 24, 2023**.



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 **April 13, 2023**, 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 the applicant, the Minister or a specified person or public body that has an interest in the matter may appeal the decision to the Ontario Land Tribunal. A "specified person" does not include an individual or a community association.

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.

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