

**DECISION**  
**MINOR VARIANCE / PERMISSION**

<b>Date of Decision:</b>	May 12, 2023
<b>File No(s):</b>	D08-02-23/A-00076
<b>Application:</b>	Minor Variance under section 45 of the <i>Planning Act</i>
<b>Owner(s)/Applicant(s):</b>	Michelle Sample
<b>Property Address:</b>	314 Queen Elizabeth Driveway
<b>Ward:</b>	17 - Capital
<b>Legal Description:</b>	Part of Lot E, West of Driveway, Registered Plan 35085
<b>Zoning:</b>	R3Q [1474]
<b>Zoning By-law:</b>	2008-250
<b>Hearing Date:</b>	May 3, 2023

**APPLICANTS' PROPOSAL AND PURPOSE OF THE APPLICATION**

- [1] The Owner wants to renovate her existing three-storey dwelling, as shown on plans filed with the Committee.

**REQUESTED VARIANCES**

- [2] The Owner requires the Authority of the Committee for Minor Variances from the Zoning By-law as follows:
- a) To permit a reduced lot area of 193.9 square metres, whereas the By-law requires a minimum lot area of 195 square metres.
  - b) To permit a reduced front yard setback of 0.5 metres, whereas the By-law states that the addition or expansion to a non-complying building must move towards compliance such that the addition falls between halfway of the required and existing non-complying situation, 1.0 m in this case.
  - c) To permit a reduced rear yard setback of 0 metres (0% of the lot depth), whereas the By-law states that the addition or expansion to a non-complying building must move towards compliance such that the addition falls between halfway of the required and existing non-complying situation 3.94 metres (22% of the lot depth)

- d) To permit a reduced rear yard area of 0% of the lot depth (0.0 square metres), whereas the By-law states that the addition or expansion to a non-complying building must move towards compliance such that the addition falls between halfway of the required and existing non-complying situation 15% of the lot area (28.06 square metres).
  - e) To permit a reduced interior side yard setback of 0.0 metres, whereas the By-law requires a minimum combined interior side yard setback of 1.8 metres with one no less than 0.6 metres.
  - f) To permit a setback of 0.25 metres from the exterior wall of the building for a rooftop terrace, whereas the By-law requires a minimum setback of 1.5 metres from any exterior wall of the building for a rooftop terrace.
  - g) To permit a rooftop terrace access setback of 0.0 metres along the rear exterior building wall, whereas the By-law requires setback of a distance equal to its height from the exterior front wall and exterior rear wall or 2.90 metres in this case.
  - h) To permit steps leading to the principal entrance to be located 0.0 metres to the front lot line, whereas the By-law requires steps located at or below the floor level of the first floor must project no closer than 0.6 metres to a lot line in a front yard.
  - i) To permit a deck in the front yard to be located 0.28 metres from the front lot line, whereas the by-law requires a deck projection may be located no closer than 1.0 m to the front lot line.
- [3] The application indicate 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 Jessica D'Aoust, Agent for the Applicant, who confirmed that the statutory notice posting requirements were satisfied.

### **Oral Submissions Summary**

- [5] Ms. D'Aoust, who appeared along with Farouk Noormohamed, project architect, provided a slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request. Ms. D'Aoust explained that variances (a) through (d) reflected existing conditions on the site and were triggered by the renovations, including attaching the garage to the dwelling instead of remaining as an accessory structure. She highlighted the dwelling benefits from legal non-complying rights, and the proposal would create a more accessible and functional dwelling. Ms. D'Aoust stated the current garage

extends over the property lines at the rear and, and the reconstruction of the garage would rectify this condition.

- [6] City Planner Margot Linker was also present and confirmed that she had no concerns with many of the requested variances given the site's context and legal non-complying rights. Ms. Linker raised concerns with the reduced setbacks for the garage and how drainage, access and maintenance would be addressed. If an easement exists over the abutting property, concerns regarding access and maintenance of the garage would be alleviated. She also had concerns with the reduced setback for the roof top terrace and the potential for overlook onto adjacent properties.
- [7] The Committee also heard oral submissions from the following individual:
- Greg Weston, 312 Queen Elizabeth Driveway, highlighted concerns relating to heritage character of the area, drainage onto his property; construction of the garage right to the property line resulting in access and maintenance issues; the height of the proposed garage; the front deck abutting the National Capital Commission (NCC) lands and its effect on reducing the natural landscaping at the front of the property; and the privacy of adjacent neighbours.
- [8] In response to the concerns raised by Mr. Weston, Ms. D'Aoust stated that the applicant would be undertaking all necessary tree protection measures required to protect the NCC-owned trees. Ms. D'Aoust also confirmed that the subject property benefits from an existing easement over a portion of 1 Second Avenue for maintenance of the garage.
- [9] In response to questions from the Committee, Ms. Linker confirmed that a grading plan would be required at the building permit stage to demonstrate how the proposed development will capture runoff and control it on the property. Ms. Linker also confirmed that the City's heritage staff had been consulted, and they had no concerns with the proposal. She further confirmed that she had reached out to City's legal Services to obtain a copy of the easement document. The Panel agreed this was relevant in considering the proposal and therefore stepped the application down to be recalled later in the agenda.
- [10] Upon recall, Ms. Linker confirmed that she had reviewed the documents and the easement was described as a "right of way to be used in common", therefore allowing for general uses including access and maintenance.
- [11] Following the public hearing, the Committee reserved its decision and advised that a written one with reasons would be issued within ten days.

**DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED IN PART**

**Application Must Satisfy Statutory Four-Part Test**

[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.

### **Evidence**

[13] Evidence considered by the Committee included any oral submissions made at the hearing, as highlighted above, and the following written submissions held on file with the Secretary-Treasurer and available from the Committee Coordinator upon request:

- Application and supporting documents, including a planning rationale, plans, and tree information.
- City Planning Report, received April 28, 2023, with no concerns
- Rideau Valley Conservation Authority, email dated April 27, 2023, with no objections
- Hydro Ottawa, email dated April 27, 2023, with no concerns
- Hydro One, email dated April 27, 2023, with no concerns
- National Capital Commission, email dated May 1, 2023, with concerns
- Richard Bower, 23 First Avenue, email dated May 1, 2023, with concerns
- Greg Weston, 312 Queen Elizabeth Driveway, email dated May 1, 2023, with concerns
- Roxane and Goshusp John, 1 Second Avenue, Submitted by Agent, May 1, 2023, in support

### **Effect of Submissions on Decision**

[14] The Committee considered all written and oral submissions relating to the application in making its decision and granted the application in part.

[15] Based on the evidence, the Committee is satisfied that variances (a), (b), (c), (d), (f), (g) and (h) meet all four requirements under subsection 45(1) of the *Planning Act*.

[16] The Committee notes that the City's Planning Report raises "some concerns" regarding the application, highlighting that: "Staff do not anticipate adverse impacts where the terrace has a reduced setback from the north, east and west exterior

walls based on the existing context. However, Staff have some concerns with the reduced setback from the south exterior wall as this may cause privacy and overlooking issues onto the abutting property's outdoor amenity area." However, the Planning Report also highlights that "the subject site currently enjoys legal non-complying rights, and the proposed renovation and addition will maintain most of the existing building envelope."

- [17] Considering the circumstances, the Committee finds that, because the proposal fits well in the neighbourhood, requested variances (a), (b), (c), (d), (f), (g) and (h) are, from a planning and public interest point of view, desirable for the appropriate use of the land, building or structure on the property, and relative to the neighbouring lands.
- [18] The Committee also finds that requested variances (a), (b), (c), (d), (f), (g) and (h) maintain the general intent and purpose of the Official Plan because the proposal reinforces the streetscape character and conserves its cultural heritage landscape.
- [19] In addition, the Committee finds that the requested variances (a), (b), (c), (d), (f), (g) and (h) maintain the general intent and purpose of the Zoning By-law because the proposal represents orderly development that is compatible with the surrounding area.
- [20] Moreover, the Committee finds that the requested variances (a), (b), (c), (d), (f), (g) and (h), both individually and cumulatively, are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [21] Conversely, based on the evidence, the Committee is not satisfied that the proposed reduced interior side yard setback, variance (e), and the increased deck projection, variance (i), meet all four requirements under subsection 45(1) of the *Planning Act*.
- [22] Specifically, the Committee finds that both variances (e) and (i) represent overdevelopment of the site and are, from a planning and public interest point of view, not desirable for the appropriate development or use of the land, building or structure on the property, and relative to the neighbouring lands. Failing one of the four statutory requirements, the Committee is unable to authorize the reduced interior side yard setback nor the increased deck projection.
- [23] THE COMMITTEE OF ADJUSTMENT therefore authorizes the requested variances (a), (b), (c), (d), (f), (g) and (h), **subject to** the location and size of the proposed construction being in accordance with the plans filed and Committee of Adjustment date stamped April 5, 2023, as they relate to the requested variances.
- [24] The Committee does not authorize requested variances (e) or (i).

Absent  
JOHN BLATHERWICK  
VICE-CHAIR

*"Stan Wilder"*  
STAN WILDER  
MEMBER

Absent  
HEATHER MACLEAN  
MEMBER

*"Steven Lewis"*  
STEVEN LEWIS  
MEMBER

*"Michael Wildman"*  
MICHAEL WILDMAN  
ACTING CHAIR

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **May 12, 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 **June 1, 2023**, delivered by email at [cofa@ottawa.ca](mailto:cofa@ottawa.ca) and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,  
101 Centrepointe Drive, 4<sup>th</sup> 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](mailto: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.*

**Committee of Adjustment**  
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