

DECISION
MINOR VARIANCE / PERMISSION

Date of Decision:	August 11, 2023
File No(s):	D08-02-22/A-00290 & D08-02-22/A-00291
Owner(s):	6335 Dobson Inc.
Location:	6335 Dobson Lane
Ward:	21 - Rideau-Jock
Legal Description:	Part of Lot 22, Concession 2, former Township of Goulbourn
Zoning:	RU
Zoning By-law:	2008-250
Hearing Date:	August 1, 2023, in person and by videoconference

PURPOSE OF THE APPLICATIONS

- [1] The Owner has filed Applications for Consent (D08-01-22/B-00304 & D08-01-22/B-00305) which, if approved, will divide its property into three separate parcels of land. The proposed parcels of land will not be in conformity with the requirements of the Zoning By-law.

RELIEF REQUIRED:

- [2] The Owner requires the Authority of the Committee for Minor Variances from the Zoning By-law as follows:

D08-02-22/A-00290: 6319 Dobson Lane, Part 1:

- a) To permit a reduced lot width of 24 metres, whereas the By-law requires a minimum lot width of 50 metres.

D08-02-22/A-00291: 6315 Dobson Lane, Part 3:

- b) To permit a reduced lot width of 37.7 metres, whereas the By-law requires a minimum lot width of 50 metres.

- [3] The applications indicate that the Property is subject to the above noted Consent Applications under the *Planning Act*. A related Consent Application was also filed

for the abutting property at 6305 Dobson Lane (D08-01-22/B-00306). These applications will be heard concurrently.

PUBLIC HEARING

- [4] Prior to the scheduled hearing on January 11, 2023, the Committee received an adjournment request from Adam Thompson, Agent for the Owner, seeking more time for consultation with City staff. Adjournment requests were also filed by residents C. Noonan and D. and M. Pearen, for more time to review the applications. On January 11, Mr. Thompson spoke to his request and, with all parties in agreement, the applications were adjourned to February 15.
- [5] On February 15, the applications were adjourned to March 15 at the request of City Planner Sean Harrigan for continued discussions between with the Applicants and City staff, then further adjourned to May 15 for the same reason.
- [6] On May 15, Mr. Thompson requested more time for the Applicants to consult with City Legal Services regarding which version of the Official Plan – the 2003 Official Plan (“2003 OP”) or the 2022 Official Plan (“new OP”) – applies to these applications. The applications were adjourned to July 4.
- [7] On July 4, the Committee heard from Murray Chown, also acting as Agent for the Owner, and from Roberto Aburto, solicitor for the Owner. Mr. Aburto addressed the issue of which Official Plan applies, summarizing arguments in his written correspondence on file. He referred the Committee to the “*Clergy* principle,” according to which, applicants may be entitled to have their land use planning applications evaluated under the policies in place at the time the application is made. He argued that the Committee first received the applications on September 22, 2022, before Ministerial approval of the new OP on November 4, and therefore the 2003 OP applies.
- [8] Mr. Harrigan summarized the City’s position, arguing that the materials submitted on September 22 were incomplete. He noted that the applications were not deemed complete by Committee staff until December 14. He also explained that, under the transition policy approved by City Council on October 27, 2021, City Planning staff were directed to review applications under both the 2003 OP and the new OP, and to apply whichever policies are more restrictive.
- [9] The Applicants requested that the Committee render a decision on the applicability of the *Clergy* principle and which Official Plan applies. The Chair explained that the Committee’s procedural rules do not contemplate advance decisions on procedural matters. The Committee therefore agreed to adjourn the applications to give the Applicants more time to prepare a presentation on the merits of the application that addresses relevant policies of both Official Plans, with emphasis on those policies of the new OP that prejudice the applications. The Committee therefore adjourned the applications to August 1.

Oral Submissions Summary

- [10] At the hearing on August 1, the Committee heard from Mr. Thompson, who provided a slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee upon request. Mr. Thomson summarized the proposal and noted that the Applicants disagreed with amendments proposed by the City that would change the frontage of the proposed lots to 0 metres, since the extension of Richland Drive would be a condition of provisional consent and the frontage would apply if the severances were finalized. He also referred the Committee to a table highlighting relevant policy differences between the 2003 OP and the new OP.
- [11] The Committee also heard from Mr. Aburto, who reiterated the Applicants' position on the *Clergy* principle, highlighting that the applications were received by the Secretary-Treasurer on September 22, 2022, and that the submissions after November 4 were insignificant and did not change the applications.
- [12] City Planner Sean Harrigan summarized the arguments in his Planning Report on file concerning the applicability of the new OP, as well as the City's objections to the expansion of the Village boundary, the potential for the proposed severance and road extension to impede the future planned expansion of the Village, and the impact of the proposal on the biodiversity and ecological function of the area, which is subject to a Natural Heritage Systems Core Area overlay under the new OP.
- [13] Mr. Chown reiterated that the more restrictive policies of the new OP, which effectively prohibit a road extension and the creation of lots without existing street frontage, are prejudicial to the applications.
- [14] Drew Paulusse, Senior Biologist (GEMTEC) for the Applicants, addressed concerns regarding the Provincially Significant Wetlands (PSW) on the property, highlighting that the impact of the proposed construction would be negligible given the distance between the PSW and the proposed building envelopes. He also stated that the overall loss of woodlands would not be significant and that options exist for re-vegetation.
- [15] In closing, Mr. Chown submitted that the applications would not expand the Village of Richmond, emphasizing that the proposal was for large country lots, as compared to the concentrated suburban development found within the Village. He also submitted that the opportunity would still exist to expand the Village boundary in the future and that the proposal complies with the Provincial Policy Statement.
- [16] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS REFUSED
Applications Must Satisfy Statutory Four-Part Test

[17] 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

[18] Evidence considered by the Committee included all 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, an Environmental Impact Statement, and a sign posting declaration.
- Gowling WLG (Canada) LLP, email received May 2, 2023, addressed to City Legal Services.
- Gowling WLG (Canada) LLP, email received April 11, 2023, addressed to City Planner Sean Harrigan.
- Gowling WLG (Canada) LLP, email received June 29, 2023, with Book of Authorities (Clergy Principle).
- Applicants' email dated May 2, 2023, requesting adjournment; dated January 9, 2023, requesting adjournment.
- City Planning Report received July 28, 2023, objecting to the applications; received June 29, 2023, objecting to the applications; received April 28, 2023, objecting to the applications; received March 10, 2023, objecting to the applications; received February 10, 2023, objecting to the applications and requesting adjournment; received January 6, 2023, objecting to the applications.
- City Legal Services, email received April 27, 2023, addressed to City Planner Sean Harrigan.
- Hydro Ottawa email dated July 28, 2023, with comments; dated June 20, 2023, with comments; dated April 27, 2023, with comments; dated March 8, 2023, with comments; dated February 8, 2023, with comments; dated January 9, 2023, with comments.

- Hydro One email dated July 24, 2023, with comments; dated April 28, 2023, with comments.
- McNaughton Hermsen Britton Clarkson, representing TransCanada PipeLines Limited, email dated April 24, 2023, with comments; dated February 28, 2023, with comments; dated January 31, 2023, with comments; dated December 23, 2022, with comments.
- A. and B. Kelly, residents, email received January 4, 2023, with comments.
- C. Noonan, resident, email received January 9, 2023, with concerns and requesting adjournment.
- D. and M. Pearen, residents, email received January 5, 2023, with concerns and requesting adjournment.
- E. and D. Sterritt, residents, email received January 6, 2023, with objections.
- J. Clark, resident, email received January 5, 2023, with comments.
- M. Covey, resident, email received March 13, 2023, with concerns; received January 9, 2023, with concerns.
- P. Blancher, resident, email received January 5, 2023, with concerns.
- R. Ferch and L. Featherston-Ferch, residents, email received January 9, 2023, with concerns.
- A. Foss, resident, email received January 1, 2023, with comments.
- Rideau Valley Conservation Authority, email received July 27, 2023, with no objections; received July 3, 2023, with no objections; received April 27, 2023, with no objections; received March 10, 2023, with no objections; received February 14, 2023, with no objections.
- Ministry of Transportation, email received August 1, 2023, with no comments; received March 7, 2023, with no comments; received February 7, 2023, with no comments.

Effect of Submissions on Decision

[19] The Committee considered all written and oral submissions relating to the applications in making its Decision.

[20] The Committee notes that the City's Planning Department "objects" to the applications, highlighting that: "the minor variance for reduced lot width is a direct

result of the road design and proposed turn-around circle at the new end point of Richland Drive. Staff cannot confirm that the proposal adheres to the Four Tests as the entire development is contrary to the general intent of the Official Plan and the proposed road design, which dictates the lot width, may not be appropriate given the outstanding environmental and anticipated engineering constraints.”

- [21] Based on the evidence, two of the four Members of the Committee who heard the applications (Panel Chair William Hunter and Member Terrence Otto) are not satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.
- [22] Panel Chair Hunter and Member Otto find that the proposed development is premature and may impede the future expansion of the Village, and therefore, from a planning and public interest point of view, the variances are not desirable for the appropriate development or use of the land.
- [23] In addition, Panel Chair Hunter and Member Otto are not satisfied that the variances maintain the general intent and purpose of the Official Plan in terms of the impact of the development on the future expansion of the Village boundary and surrounding natural features. In their opinion, an analysis of the specific effect of the more restrictive policies in the new OP is not necessary or determinative, as the variances fail to maintain the general intent and purpose of both Official Plans in this respect.
- [24] Conversely, the other two Members of the Committee (Members Jocelyn Chandler and Beth Henderson) find that the development of this land for residential purposes is in the public interest as it supports additional residential units at a locally appropriate scale and in an environmentally sensitive deployment, and therefore the requested variances are, from a planning and public interest point of view, desirable for the appropriate development or use of the land.
- [25] Members Chandler and Henderson also agree that the applications were submitted prior to November 4, 2022, in a form which was substantially complete and constituted, for the purpose of evaluating the proposal under the appropriate policies, a “valid application.” In the relatively unique situation of the transition between the Council and Ministerial approval of the Official Plan, these Members find that this is sufficient for the Committee to consider the application under the policies of the 2003 OP. These two Members find that requested variances maintain the general intent and purpose of the 2003 OP because the proposal does not hinder Village expansion any more than the existing Richland/Underhill and Lulworth lot fabric already does, rather, it logically completes the existing community within the natural boundary of the adjacent watercourse and rail corridor, at an appropriate density.
- [26] In addition, Members Chandler and Henderson find that the requested variances maintain the general intent and purpose of the Zoning By-law because the lots are

substantially sized and logically configured to limit roadway length, maintain tree cover and avoid constraints.

- [27] Moreover, Members Chandler and Henderson find that the requested variances are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [28] Pursuant to the Committee's *Rules of Procedure*, any application on which there is a tie vote shall be deemed to be refused.
- [29] THE COMMITTEE OF ADJUSTMENT therefore does not authorize the requested variances.

"William Hunter"
Opposed
WILLIAM HUNTER
CHAIR

"Terence Otto"
Opposed
TERENCE OTTO
MEMBER

"Beth Henderson"
In support
BETH HENDERSON
MEMBER

ABSENT
MARTIN VERVOORT
MEMBER

"Jocelyn Chandler"
In support
JOCELYN CHANDLER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **August 11, 2023**.



Matthew Garnett
Acting 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 **August 31, 2023**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 Centrepointhe 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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