

Committee of Adjustment
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City of Ottawa | Ville d'Ottawa
Comité de dérogation

June 22, 2023

Committee of Adjustment
City of Ottawa
101 Centrepointe Drive
Ottawa, ON, K2G 5K7

Attention: Michel Bellemare, Secretary - Treasurer

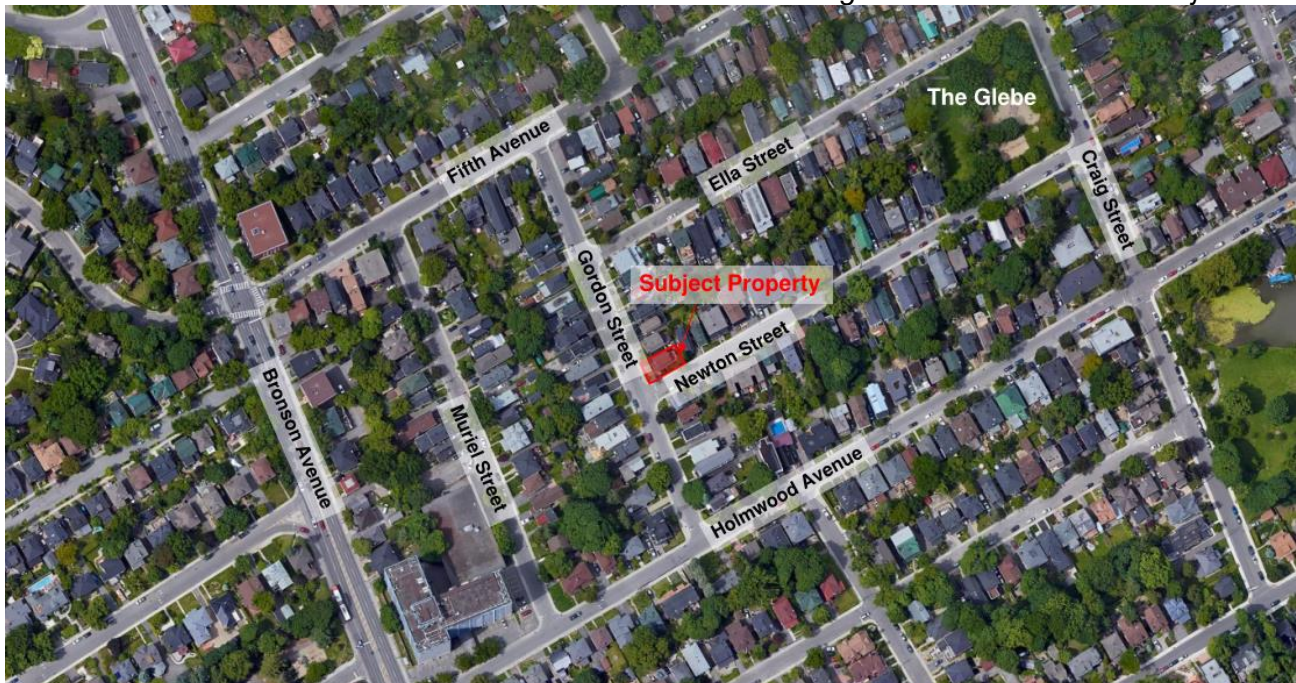
Dear Mr. Bellemare:

**Reference: 31 Gordon Street
Application for Permission
Our File No 122213**

Novatech has been retained by the owners of the property municipally known as 31 Gordon Street to prepare and file an application for permission to expand a legally non-complying use. The permission application will facilitate a second storey addition and deck projection to the existing legally non-complying detached dwelling.

This letter describes the existing conditions of the site and its surrounding context, the proposed development, and the rationale in support of the application.

Figure 1: Location of the Subject Site

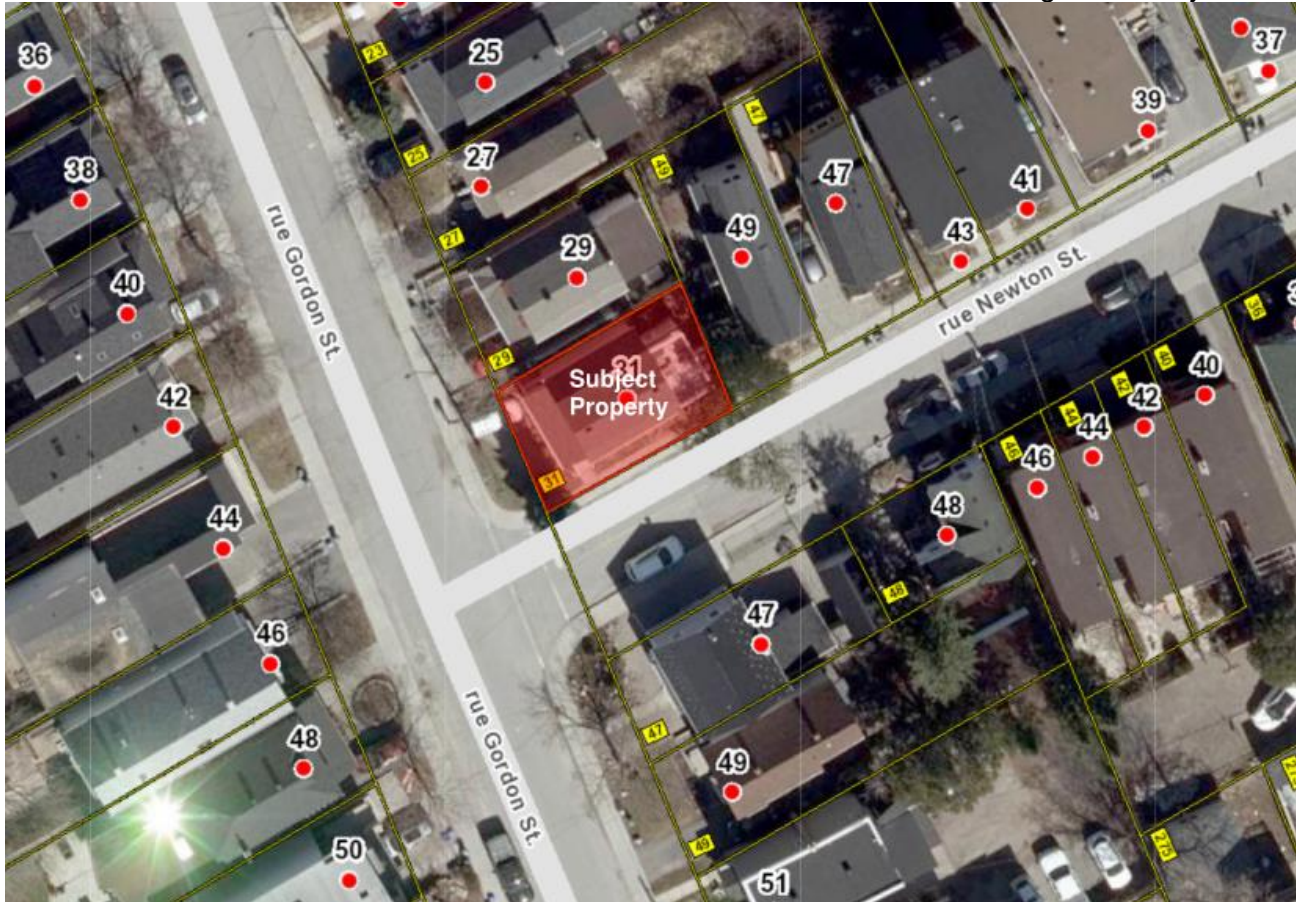


Site and Context

Site

The Subject Property is located in the Glebe neighbourhood and is within the City of Ottawa's Capital Ward (Ward 17). The property is a corner lot located at the northeast corner of Gordon Street and Newton Street (Figure 2). The Subject Property is in an area bounded by Fifth Avenue to the north, Craig Street to the east, Holmwood Avenue to the south, and Bronson Avenue to the west (Figure 1). The Subject Property has a frontage of 9.93 meters along Gordon Street, 15.98 meters along Newton Street, and a lot area of approximately 158 square meters. The Subject Property is legally known as Part of Lot 5 (East Gordon Street), Registered Plan 33446, City of Ottawa.

Figure 2: Subject Site



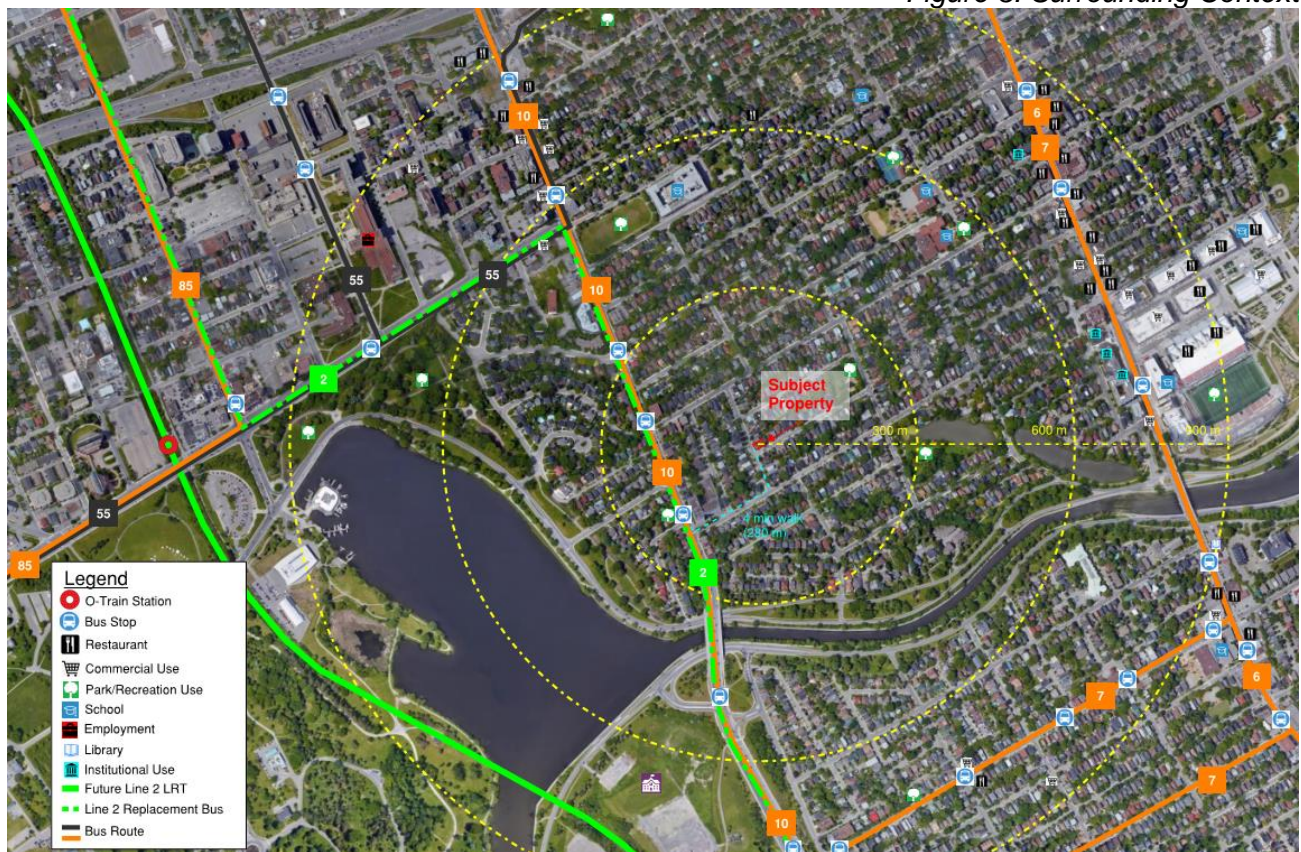
The Subject Property is zoned R3P [1474] in the City of Ottawa Zoning By-law 2008-250. The property is subject to the Mature Neighbourhoods Overlay of the Zoning By-law. The Subject Property is designated Neighbourhood within the Inner Urban Transect in the City of Ottawa Official Plan (2022) and is subject to the Evolving Neighbourhoods Overlay.

The Subject Property is currently developed with a detached dwelling. The detached dwelling is two storeys and includes a second storey deck to the rear of the property. The existing dwelling is legally non-complying with respect to minimum required lot area, maximum front yard setback, minimum corner side yard setback, minimum interior side yard setback, and maximum permitted projection into a required yard.

Surrounding Context

The Subject Property is primarily surrounded by residential uses, including a number of detached, semi-detached, three-unit, and townhouse dwellings on small lots (Figure 3). There are some high-density residential uses such as low-, mid-, and high-rise buildings located along Bronson Avenue and Carling Avenue, which are both identified as Mainstreet Corridors in the Official Plan. The Subject Property is within walking distance of Dow's Lake and the Rideau Canal. The Subject Property is a four minute walk (300 m) from the nearest bus stop on Bronson Avenue, which is serviced by the number 10 frequent bus route, and is a 16 minute walk from the Dow's Lake LRT station (former Carling station). The Subject Property is also located within proximity of a number of schools, community facilities, shops, restaurants, and Lansdowne.

Figure 3: Surrounding Context



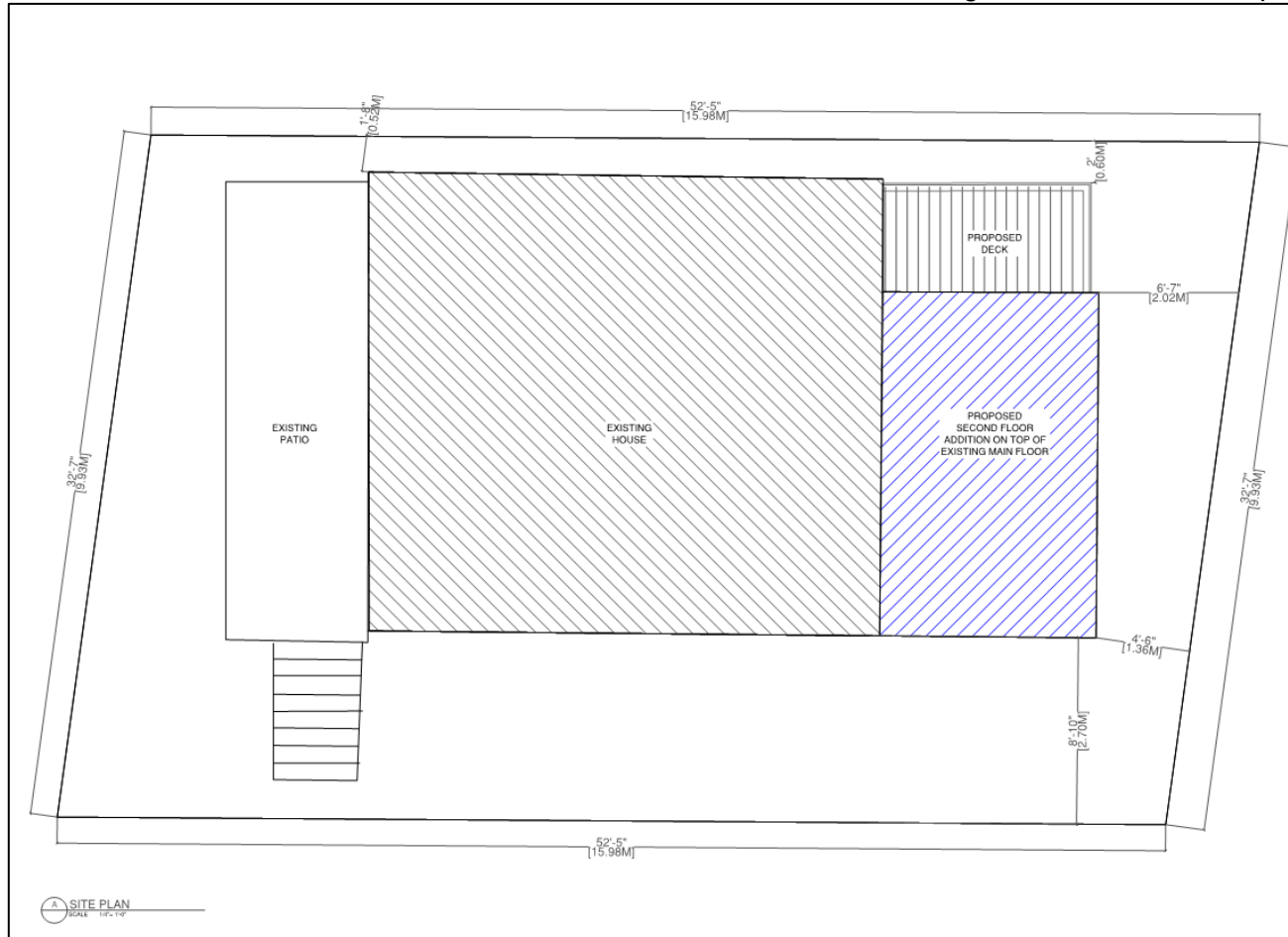
Proposed Development

The proposed Permission application is required to facilitate a second storey addition and deck projection for the legally non-complying detached dwelling on the Subject Property.

An approximately 15.6 metre second-storey addition is proposed above the southeast corner of the existing detached dwelling facing the corner side yard (Figure 4). The existing second storey deck will be removed and replaced by the second storey addition. The addition will be located within the existing building footprint and will be located within the required 3 metre corner side yard setback. An approximately 4.8 square metre deck is proposed on the second storey above

the existing at-grade porch. The proposed second-storey deck will not encroach beyond the existing rear and side building walls but will be located within the required 1.8 metre interior side yard setback.

Figure 4: Site Plan Excerpt



Permission Application

The requested permission for this application is identified below:

- To permit the expansion of a legal non-complying detached dwelling to provide a corner side yard setback of 2.7 metres; whereas the By-law requires a minimum corner side yard setback of 3 metres (Section 160(13), Table 160A(P)).
- To permit the expansion of a legal non-complying detached dwelling to provide an interior side yard setback of 0.52 metres; whereas the By-law requires a minimum interior side yard setback of 1.8 square metres (Section 160(13), Table 160A(P)).

Note: All requested permissions have been rounded to the nearest tenths decimal place, as instructed by the Committee of Adjustment.

Permission Rationale

Section 45(2) of the Planning Act permits the expansion of a legal non-conforming use. Section 45(2) of the Planning Act states:

“In addition to its powers under subsection (1), the committee, upon any such application,

(a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

(i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or

(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or

(b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).”

There are no tests set out in the Planning Act for applications under Section 45(2). The decision of *Sims et al. v. Daschko* (attached) sets out the test for expansion of a legal non-conforming use. The Ontario Municipal Board decision states that *“there must always be a prior consideration of whether what is intended is indeed desirable for the appropriate development or use of the land, building or structure. The effect of any concession made must always be weighed in the light of the impact it could have upon neighbouring properties enjoying a different classification”*.

The tests for permission to expand a legally non-conforming use are that the expansion is appropriate and desirable for the area and that there is not undue impact on neighbouring properties.

The first test for the expansion of a legally non-conforming use is that it must be desirable for the appropriate development or use of the land, building, or structure.

The proposed expansion of the legally non-compliant detached dwelling is desirable for the appropriate use of the land. The existing detached dwelling is a low-rise ground-oriented dwelling that fits into the neighbourhood and includes urban characteristics such as a shallow front and corner side yard setback and two functional storeys. The proposed addition will improve the functionality of the home by providing additional space for the residents and their family while the proposed second storey deck will provide additional amenity space.

The proposed addition and deck will not increase the existing height of the dwelling. The proposed addition and deck will not extend beyond the existing building footprint of the detached dwelling and

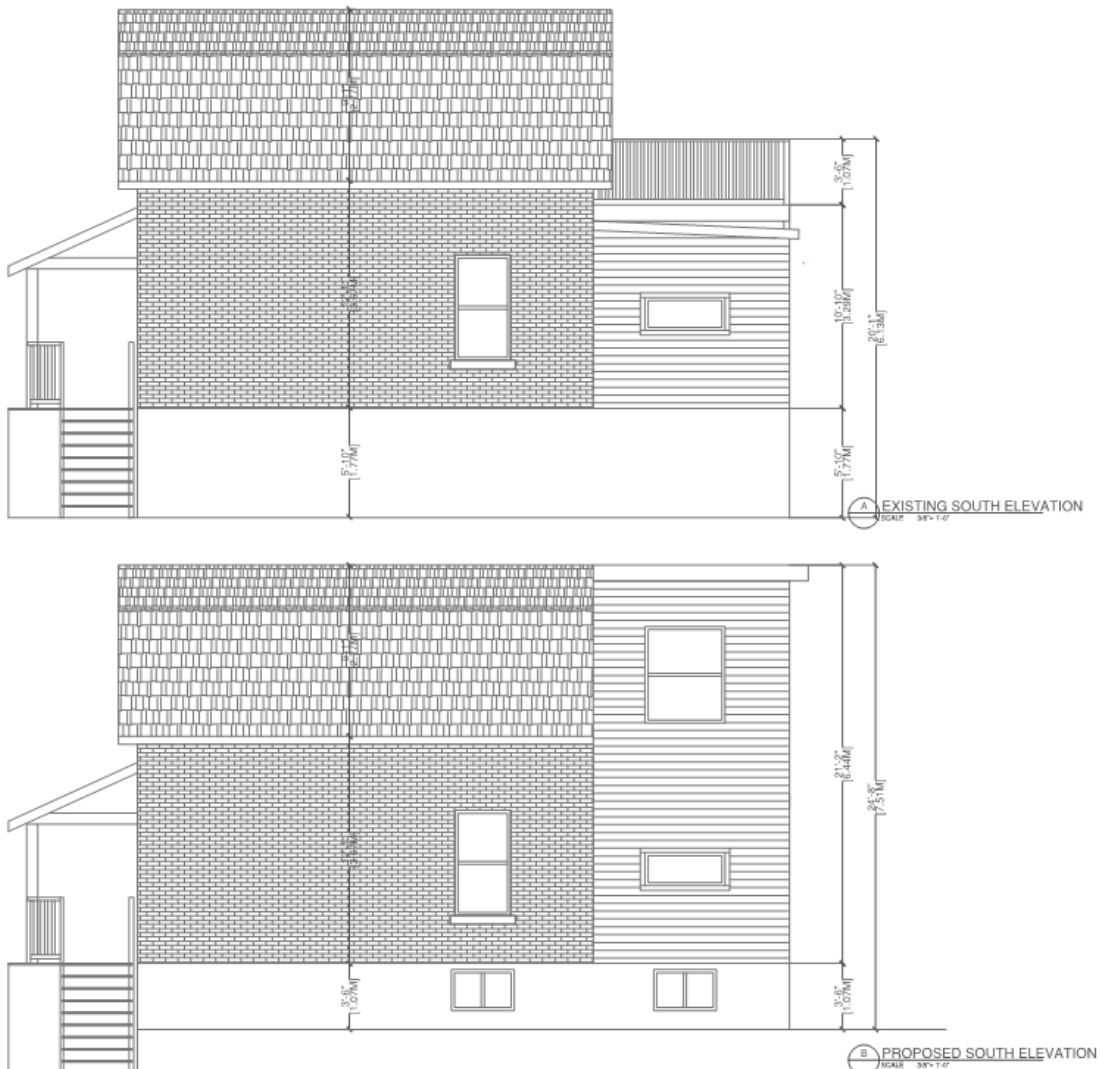
will not encroach any further into the corner side yard and interior side yard than what already exists. No trees or soft landscaping will be impacted by the proposed addition and deck since the building footprint will not be increased.

The expansion of the legally non-complying use is desirable for the appropriate development or use of the land, building, or structure.

The second test for expanding a legal non-complying use is the impact on neighbouring properties.

The existing detached dwelling is a legal non-complying use. The R3P zone permits the detached dwelling use. The proposed addition and deck projection will be located within the existing building footprint and are setback no closer to the neighbouring properties than the existing dwelling. The proposed addition will be visible from Newton Street but will minimally impact the streetscape. The addition will match the height of the existing second storey and will only extend as far as the existing building walls of the first storey below (see Figure 5).

Figure 5: Existing and Proposed South Elevations



The proposed deck projection will not be visible from the street. The proposed deck is located above the existing at-grade patio and will not project any further into the rear and interior side yard than the existing dwelling. The proposed deck will not create any more overlook into neighbouring yards than the existing second-storey deck as it does not project further into the rear yard (see Figure 6). While the proposed deck is closer to the interior lot line compared to the existing deck (see Figure 7), the overlook impacts will be minimal. The proposed deck projection is located next to the driveway of the adjacent property to the north. The existing dwelling on the adjacent property also extends further into the rear yard than the existing dwelling or proposed deck on the Subject Property. This will reduce any privacy and overlook impacts on the neighbouring property and ensure that the proposal is minimally impactful.

Figure 6: Existing and Proposed North Elevation Showing Extent of Deck into Rear Yard

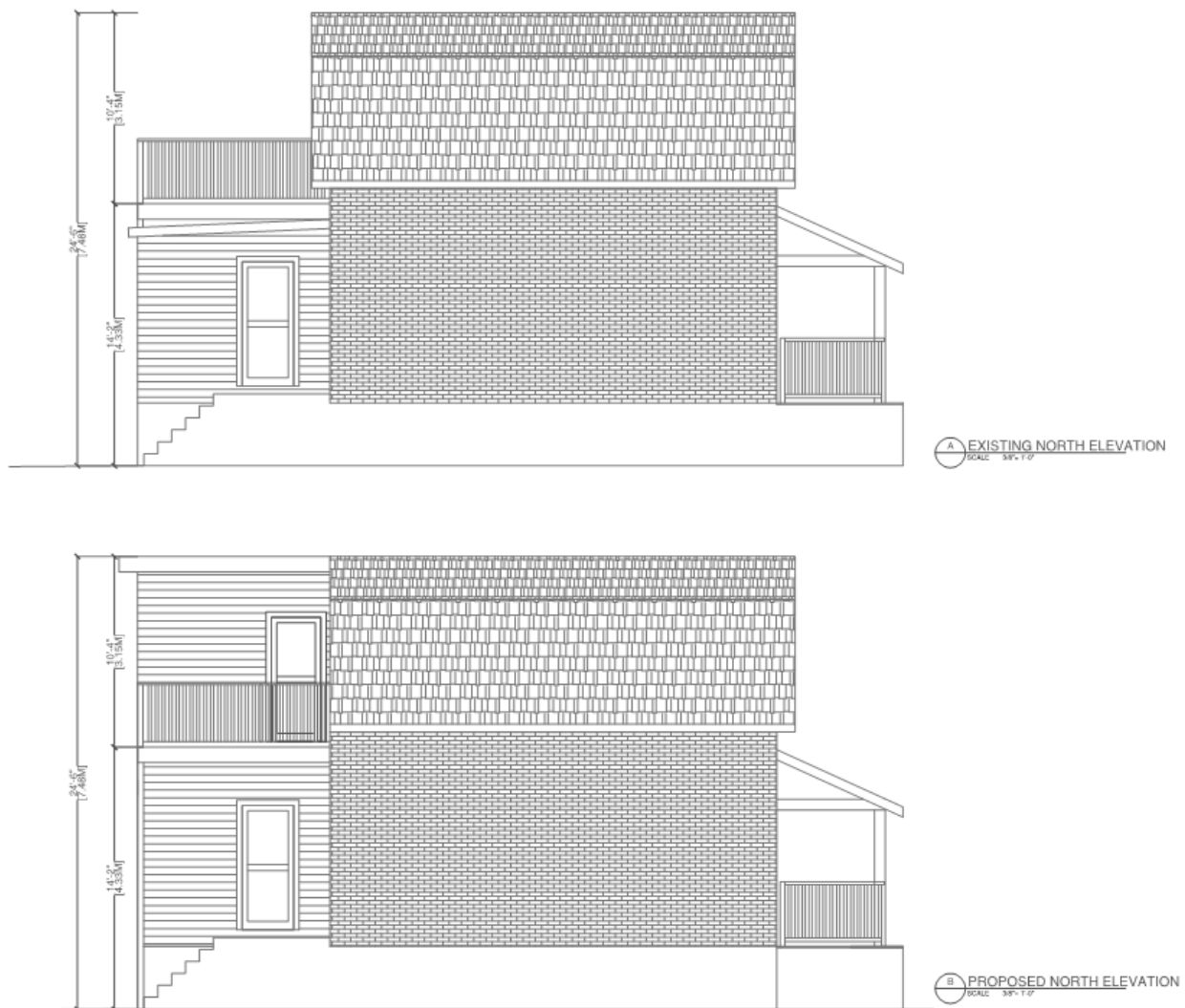
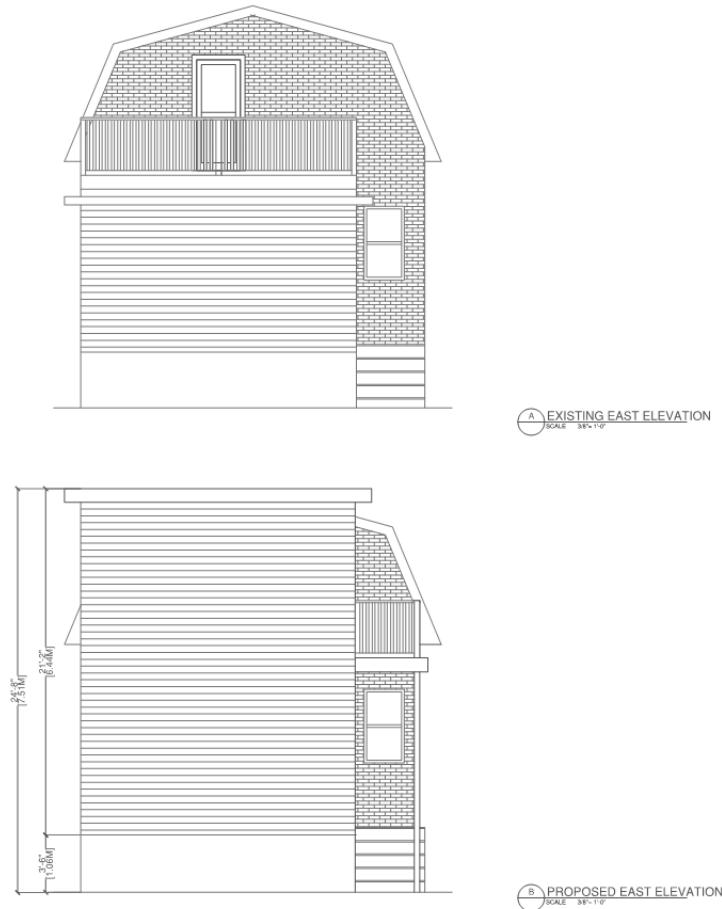


Figure 7: Existing and Proposed East Elevation Showing Extent of Deck into Interior Side Yard



The proposed expansions will have a minimal impact on soft landscaping and tree cover on the Subject Property. Since the building footprint is not being expanded and the proposed expansions are all on the second storey, all of the trees on the Subject Property will be retained. This will ensure that the expansion is compatible with the neighbourhood and will reduce any impacts to the streetscape.

The expansion of the legally non-complying use will not impact neighbouring properties.

Provincial Policy Statement

Section 3(5) of the Planning Act states:

“A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision;”*

A decision by the Committee of Adjustment with respect to a planning matter must be consistent with the Provincial Policy Statement (PPS). The Provincial Policy Statement provides policy direction on matters of provincial interest that are related to land use planning and development.

Policy 1.1.1 states:

“Healthy, liveable and safe communities are sustained by:

- a) promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;*
- b) accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;*
- c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;*
- d) avoiding development and land use patterns that would prevent the efficient expansion of settlement areas in those areas which are adjacent or close to settlement areas;*
- e) promoting the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs;*
- f) improving accessibility for persons with disabilities and older persons by addressing land use barriers which restrict their full participation in society;*
- g) ensuring that necessary infrastructure and public service facilities are or will be available to meet current and projected needs;*
- h) promoting development and land use patterns that conserve biodiversity; and*
- i) preparing for the regional and local impacts of a changing climate.”*

The proposed permission application will not impact the development of safe and healthy communities. The proposed legal non-complying addition and deck projection will promote efficient development and create a more functional family-oriented dwelling unit that provides the residents and their family with additional living and amenity spaces. There will be no health and safety issues resulting from the proposal and there will be minimal impact on neighbours.

The proposed permission application is consistent with the direction of the Provincial Policy Statement.

Conclusion

The proposed development at 31 Gordon Street conforms to Section 45(2) of the Planning Act. The proposed development is appropriate and desirable for the use of the land and the surrounding area. The expansion will have little to no impact on surrounding properties. The permission application is also consistent with the Provincial Policy Statement and will contribute to safe, healthy, and liveable communities. The permission to expand legal non-complying rights represents good land use planning.

In support of the applications for permission, please find enclosed:

- Cover Letter (one copy)
- Complete Permission Application Form (one original copy)
- Survey Plan (one 8.5x11 copy and one 11x17 copy)
- Site Plan (one 8.5x11 copy and one 11x17 copy)
- Elevation Drawings (one 8.5x11 copy and one 11x17 copy)
- Tree Information Report (one copy)

Should you have any questions regarding this application, please do not hesitate to contact me.

Yours truly,

NOVATECH



Simran Soor, M.PL
Planner

1975 CarswellOnt 1185
Ontario Municipal Board

Sims v. Daschko

1975 CarswellOnt 1185, 4 O.M.B.R. 390

Sims et al. v. Daschko

McCrae V-Chair

Judgment: April 3, 1975

Docket: None given.

Counsel: Eugene Fedak, for John Daschko

Headnote

Municipal law

A. L. McCrae, Vice-Chairman:

1 This application comes to the Board by way of an appeal by Anthony Sims, Alex Gould and Clara Zitaruk from a decision of the Committee of Adjustment of the City of Hamilton dated July 2, 1974, whereby the Committee granted an application by John Daschko for a variance from the provisions of By-law 6593 of the City of Hamilton, as amended, to permit the construction of a one-storey and a two-storey addition onto an existing bakery located at the rear of dwelling house premises known municipally as 16 Earl St., notwithstanding that this would be an extension of a non-conforming use and upon the conditions set out in the said decision.

2 In its written reasons, the Committee of Adjustment stated in part as follows:

1. The proposed addition will act as infilling for the existing bakery and would appear to co-ordinate the operations of the bakery and eliminate some of the existing unsightliness as well as the dilapidated structure;
2. The one storey addition replacing the drive shed that appears to be in existence in excess of 20 years would have a minimal effect on the sun light for the abutting properties to the north.

3 Evidence adduced before the Board was that the lands with which the Board is dealing were zoned as "D" by the by-law in force in the municipality, which would permit one and two-family residences. In 1974, an amending By-law 74-60 was passed by the municipal Council and not as yet approved by the Ontario Municipal Board, rezoning the rear portion of the lands of the applicant of the first instance from "D" to "H", which is a commercial classification, but like the "D" use does not permit bakeries. The Committee of Adjustment is of the opinion that the current zoning is that to which consideration should be given in dealing with this matter. It would appear however that there is not too much turning upon this since under both by-laws the use being made of the lands we are dealing with remains legal non-conforming. Extensions of course, of a legal non-conforming use are permitted subject to the requirements of s. 42 [of the *Planning Act*, R.S.O. 1970, c. 349] and providing that what is proposed constitutes a proper planning concept for the area which will not adversely affect the amenities of other properties lying in close proximity.

4 Alexander Gould, one of the appellants, stated that he has lived at 20 Earl St. for over 20 years and is located only two houses to the north of the subject bakery. It is his evidence that he resides in a single-family home upon which he has spent some \$7,000 in home improvements over the years. To the rear of his property he has invested some \$200 in a rose garden requiring a normal amount of sunlight. Exhibit 2 is an old photograph of his home prior to any renovation and showing an additional structure on the front, which has since been torn down. Exhibit 5 is a view of his home as renovated showing its relationship or

proximity to the home of Anthony Sims, another appellant. The witness Gould stated that he was not opposed to the expansion but only to the manner in which it was going to be accomplished. It was his opinion that the proposed extension should be located elsewhere on the property and not in such close proximity to existing residential homes. His main concern is that the extensions proposed will reduce the light to his back yard. He contends that the two-storey addition should be erected on an existing concrete block addition to the east and abutting a 12-foot alley. If this was done, it would be possible to further extend the building to a height of one storey to the west. It would appear, however, on submissions made that such a rearrangement would not be possible due to the bearing qualities of the existing concrete block addition.

5 The other appellant, Anthony Sims, was not present but was represented by his son, Alexander. He stated that his father resides at 18 Earl St. immediately adjacent to the bakery. From the back wall of his father's home to the high board fence at the rear, there is only a distance of 12 ¹/₂ ft. The only kitchen window faces to the east. On the south side of the house there is a distance of seven ft. three in. between it and the Daschko property. This is better seen on ex. 4, which shows the board fence to the rear and the mesh fence to the south delineating the Sims and Daschko lands. The one-storey addition, which will be approximately 10 ft. high and 15 ft. in width contemplated to replace the drive shed, will extend across a very large portion of the 25-foot rear width of the Sims property. This will block off a great deal of the limited exposure his father's property presently has, since he only has seven ft. three in. on the south part of 18 Earl St. suitable for that purpose. The witness stated that there is also a concern being expressed about the possible noise factor which would emanate from any addition to the existing bakery and raises the possibility that it would be possible to install other machinery in the building at a later date. Like the other appellant, he is of the opinion that any addition proposed should be located elsewhere on the Daschko property as it should be farther away from the residential users most affected. At the present time, he states, certain noise does emanate from the existing bakery.

6 Counsel for the applicant of the first instance did not call evidence to support the position of the applicant, but made submissions to the Board that the only concerns that had been expressed by the appellants had to do with a fear of loss of light and of noise. He raised the possibility that the addition proposed could quite possibly have the effect of muffling existing noise and any additional which might be created. He does not agree that there will be any adverse effects upon the adjacent properties through loss of light.

7 Applications such as this with which the Committee of Adjustment and the Board must deal are quite often, as is the case here, of a very complex nature. **While the *Planning Act* does in equity make provision for those properties which have been classed as legal non-conforming so that extensions of that use under proper circumstances might be contemplated, there must always be a prior consideration of whether what is intended is indeed desirable for the appropriate development or use of the land, building or structure. The effect of any concession made must always be weighed in the light of the impact it could have upon neighbouring properties enjoying a different land use classification.** Even the most recent by-law passed by the municipality does not permit bakeries within the land use classification that has been given to the subject property. It is quite clear that the homes on Earl St. were erected at a time before land use planning had been introduced to Ontario. The very minimal spacing between the homes on the street and the limitation upon lot sizes coupled with the mixing of various type of land uses in the area give eloquent testimony to this. In view of the limited residential amenities that presently apply to the lands of the appellants, it is my opinion that far greater thought planning-wise should be given to any proposed development in the immediate area than would appear to have been the case in the application before the Board. There is no planning evidence before me to support what is being sought by the owner of the bakery nor to satisfy me that the extension of the present bakery use will not adversely affect the already limited residential amenities of the neighbouring properties.

8 In all the circumstances, therefore, I am of the opinion that the appeal should succeed and the decision of the Committee of Adjustment is accordingly set aside.