

DECISION
MINOR VARIANCE / PERMISSION

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| Date of Decision: | December 22, 2023 |
| Panel: | 1 - Urban |
| File No(s): | D08-02-23/A-00220 |
| Application: | Minor Variance under section 45 of the <i>Planning Act</i> |
| Owner(s)/Applicant(s): | Ching Fun Lam |
| Property Address: | 102 Lower Charlotte Street |
| Ward: | 12 – Rideau-Vanier |
| Legal Description: | Part of Lot 11 (North Clarence Street), Plan 43586 |
| Zoning: | R4UD |
| Zoning By-law: | 2008-250 |
| Hearing Date: | December 13, 2023, in person and by videoconference |

APPLICANT'S PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] The Owner wants to enclose the existing porch at the front of the dwelling.
- [2] On November 1, 2023, the Committee adjourned this application to allow the Applicant time to apply for an additional minor variance. The Applicant has submitted revised material and wishes to proceed with the application.

REQUESTED VARIANCES

- [3] The Owner/Applicant requires the Committee's authorization for a minor variance from the Zoning By-law as follows:
 - a) To permit a reduced front yard setback of 0 metres from the front lot line, whereas the By-law requires a minimum setback of 4.5 metres from the front lot line or to align with the abutting lot.
 - b) To permit the principal entrance to face the corner lot line, whereas the By-law, based on the conclusions of a Streetscape Character Analysis, requires that the principal entrance faces the front lot line.

PUBLIC HEARING

Oral Submissions Summary

- [4] Michael Chan, Agent for the Applicant, Ching Fun Lam, Owner of the subject property, and City Planner Margot Linker were present.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED

Application Must Satisfy Statutory Four-Part Test:

- [5] 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

- [6] 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 cover letter, plans, tree information, a streetscape character analysis, a photo of the posted sign, and a sign posting declaration.
 - City Planning Report received December 7, 2023, with no concerns; received November 1, 2023, with no concerns; received October 26, 2023, requesting adjournment.
 - City Building Code Services Order to Comply received November 30, 2023.
 - Rideau Valley Conservation Authority email dated December 7, 2023, with no objections.
 - Hydro Ottawa email dated December 6, 2023, with no comments; received October 24, 2023, with no comments.
 - Ministry of Transportation email dated October 31, 2023, with no comments.

Effect of Submissions on Decision

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

- [8] Based on the evidence, the Committee is satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.
- [9] The Committee notes that the City's Planning Report raises "no concerns" regarding the application. The report clarified that the enclosure of the porch was completed two years ago, but concluded that, "the existing porch is built with materials close in texture and colour to the front façade which make it homogeneous," and "the neighbour across the street has the same main entrance look that faces the corner lot line."
- [10] 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 test.
- [11] The Committee also notes that no evidence was presented that the variances would result in any unacceptable adverse impact on neighbouring properties.
- [12] Considering the circumstances, the Committee finds that, because the existing construction fits well in the area, the requested variances 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.
- [13] The Committee also finds that the requested variances maintain the general intent and purpose of the Official Plan because the existing construction respects the character of the neighbourhood.
- [14] In addition, the Committee finds that the requested variances maintain the general intent and purpose of the Zoning By-law because the existing construction represents orderly development on the property that is compatible with the surrounding area.
- [15] Moreover, the Committee finds that the requested variances, both individually and cumulatively, are minor because they do not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [16] THE COMMITTEE OF ADJUSTMENT therefore authorizes the requested variances, **subject to the following conditions:**

1. That the location and size of the existing enclosed porch be in accordance with the plans filed, Committee of Adjustment date stamped September 5, 2023, as they relate to the requested variances.

2. That the Owner(s), or any subsequent owners, if required, in the opinion (and at the sole discretion) of the Manager, Right-of-Way, Heritage, Urban Design Department or his/her designate, acknowledges, and agrees to enter into an Encroachment Agreement to permit the encroachment of, including, but not limited to retaining walls, fences, porch/veranda, stairs, ramps, appurtenances structures or structure(s) that are permanent in nature within the City's right-of-way . The Owner shall, at its expense, provide a draft reference plan to the Right-of-Way, Heritage, and Urban Design Department, as well as to the City's Surveyor for review and approval prior to its deposit at the Land Registry Office. Immediately after the registration of the Encroachment Agreement, the Owner shall assume maintenance and replacement responsibilities in perpetuity. The Owner(s) and its successors acknowledges and agree that this Agreement is binding and shall be drafted to the satisfaction of the Manger, Right-of-Way, Heritage, and Urban Design Department, or his/her designate, and to the City's Legal Services Department. Furthermore, the Committee requires confirmation from the City's Legal Services Department that it has been registered on title. Moreover, the Owner shall be made aware that failure to receive the required approval will result in the Owner having to remove or relocate the structure(s), element(s), or feature(s) from the City's right-of-way onto private property, prior to the provisional consent being granted.

"Ann M. Tremblay"
ANN M. TREMBLAY
CHAIR

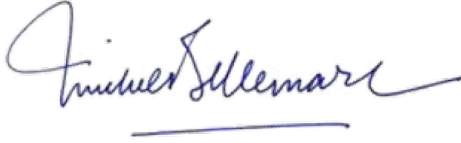
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JOHN BLATHERWICK
MEMBER

"Simon Coakeley"
SIMON COAKELEY
MEMBER

"Arto Keklikian"
ARTO KEKLIKIAN
MEMBER

"Sharon Lécuyer"
SHARON LÉCUYER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **December 22, 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 **January 11, 2024**, 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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