

**DECISION
MINOR VARIANCE**

Date of Decision:	May 24, 2024
Panel:	1 - Urban
File No(s):	D08-02-24/A-00088
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Evan Potter
Property Address:	80 Fourth Avenue
Ward:	17 – Capital
Legal Description:	Part of Lot 31 (South of Fourth Avenue), Registered Plan 35085
Zoning:	R3Q [1474]
Zoning By-law:	2008-250
Heard:	May 15, 2024, in person and by videoconference

APPLICANT’S PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] The Owner/Applicant wants to construct a two-storey coach house at the rear of the property, as shown on plans filed with the Committee. The existing detached garage will be demolished.

REQUESTED VARIANCE:

- [2] The Applicant requires the Committee’s authorization for a minor variance from the Zoning By-law to permit an increased building height (for the coach house) of 6.21 metres, whereas the By-law permits a maximum building height for a coach house of 3.6 metres.
- [3] The application indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

Oral Submissions Summary

- [4] Alain Bisson, Agent for the Applicant, provided an overview of the application. Mr. Bisson explained that, according to the Tree Information Report, one tree (#3) would be removed and replaced with a new tree. Also, he highlighted that excavation measures could be undertaken to mitigate potential damage to tree #4.

- [5] City Planner Penelope Horn expressed concerns over the proposed height and construction of the coach house, highlighting the potential impact to tree #4, a mature tree located on the adjacent property at 82 Fourth Avenue.
- [6] In response to questions from the Committee, City Forester Julian Alvarez-Barham raised concerns over the potential impact to the critical root zone of tree #4. Mr. Alvarez-Barham highlighted that the Tree Information Report submitted by the Applicant did not provide adequate detail regarding what mitigation measures would be undertaken to protect tree #4 during excavation. He added that significant clearance pruning of tree #4 would need to occur prior to construction to allow for the additional height needed for the two-storey structure. Mr. Alvarez-Barham also believed that the proposal could be redesigned to retain tree #3 by utilizing the current footprint of the garage.
- [7] The Committee also heard oral submissions from the following individual:
- M. Green, resident, highlighted discrepancies in the Applicant's submission materials and expressed concerns over the removal of the mature trees, on the subject property as well as on the adjacent property at 82 Fourth Avenue.
- [8] Evan Potter, the Owner of both 80 and 82 Fourth Avenue, indicated his intention to retain tree #4 at 82 Fourth Avenue.
- [9] In response to questions from the Committee, Mr. Bisson confirmed the total square feet of the existing dwelling and the proposed coach house, highlighting that the proposal is subsidiary in size to the principal dwelling.
- [10] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION REFUSED

Application Must Satisfy Statutory Four-Part Test

- [11] 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

- [12] 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 cover letter, plans, tree information report, photo of the posted sign, and a sign posting declaration.
- City Planning Report received May 9, 2024, with some concerns.
- Rideau Valley Conservation Authority email received May 10, 2024, with no objections.
- Ontario Ministry of Transportation email received May 3, 2024, with no comments.
- M. Green, resident, email received May 14, 2024, with concerns.

Effect of Submissions on Decision

- [13] The Committee considered all written and oral submissions relating to the application in making its decision and refused the application.
- [14] Based on the evidence, the Committee is not satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.
- [15] The Committee notes that the City's Planning Report raises "some concerns" regarding the application, highlighting that "this proposal would require the removal of a distinctive tree and significant injury to a mature tree on an abutting property. Injury to the neighbouring tree will likely be exacerbated by the minor variance sought to increase the maximum height. As a result, staff is of the opinion that the requested variance does not meet the intent of the Official Plan."
- [16] The Committee also notes the concerns raised by the City's Planning Forester regarding the impact of the proposal on the significant tree located on the adjacent property at 82 Fourth Avenue (tree #4), and the evidence presented that there might be an opportunity to redesign the proposed coach house to retain the other large tree, located on the subject property (tree #3). The Committee is also mindful of the City's Official Plan which states that "the Committee of Adjustment may refuse a development application where it deems the loss of a tree avoidable."
- [17] Based on the evidence, the Committee is not satisfied that the requested variance is desirable, from a planning and public interest point of view, to override the public interest in retaining both mature trees which contribute to the urban canopy of the neighbourhood.
- [18] The Committee also finds that, in the absence of conclusive evidence to the contrary, the removal of the tree #3 is avoidable in this instance, and therefore the requested variance fails to maintain the general intent and purpose of the Official Plan.

[19] The Committee also finds that, because the removal or loss of either tree would cause an unacceptable adverse impact on the neighbourhood, the requested variance is not minor.

[20] Failing three of the four statutory requirements, the Committee is unable to grant the application.

[21] THE COMMITTEE OF ADJUSTMENT therefore does not authorize the requested variance.

"Simon Coakeley"
SIMON COAKELEY
ACTING PANEL CHAIR

"John Blatherwick"
JOHN BLATHERWICK
MEMBER

Absent
ANN M. TREMBLAY
CHAIR

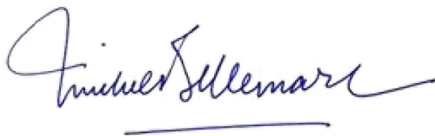
"Arto Keklikian"
ARTO KEKLIKIAN
MEMBER

Absent
SHARON LÉCUYER
MEMBER

"William Hunter"
WILLIAM HUNTER
VICE-CHAIR

"Jay Baltz"
JAY BALTZ
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **May 24, 2024**.



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 13, 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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