

DECISION
MINOR VARIANCE / PERMISSION

Date of Decision:	June 30, 2023
Panel:	1 - Urban
File No(s):	D08-02-21/A-00309
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Simon Frank and Mila Smithies
Property Address:	297 Clemow Avenue
Ward:	17 - Capital
Legal Description:	Part 1 Plan of Lot 76, North Clemow Avenue, Registered Plan 4M-11
Zoning:	R1MM H(10)
Zoning By-law:	2008-250
Hearing Date:	June 21, 2023, in person and by videoconference

APPLICANTS' PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] The Owners want to establish a parking space and two walkways in the front yard of their existing two-storey detached dwelling and to regularize the location of an existing accessory structure, as shown on plans filed with the Committee.
- [2] At the scheduled hearing on September 15, 2021, the Committee adjourned the application due to a scheduling conflict and to allow the Owners additional time to consult with area residents and the City Planner.
- [3] On October 20, 2021, the Committee adjourned the application *sine die* to allow the Owners additional time to consult with Hydro Ottawa regarding options for parking and servicing.
- [4] The application subsequently scheduled to be heard on June 7, 2023, was rescheduled to June 21, 2023, due to a public notification error.

REQUESTED VARIANCES

- [5] The Applicants require the Committee's authorization for minor variances from the Zoning By-law as follows:

- a) To permit a parking space located in the front yard, whereas the By-law states that front yard parking is prohibited unless it is determined to be the dominant pattern along the streetscape.
- b) To permit a reduced parking space length of 4.4 metres, whereas the By-law requires a minimum parking space length of 5.2 metres.
- c) To permit a reduced interior side yard setback of 0.7 metres for an accessory structure, whereas the By-law requires a minimum setback for an accessory structure of 1.2 metres from an interior lot line.
- d) To permit 0 metres of soft landscaping between a walkway and a driveway, whereas the By-law states that a walkway must be separated from any driveway by at least 0.6 metres of soft landscaping.
- e) To permit increased front yard walkway widths of 6.86 metres and 3.4 metres, whereas the By-law states that the width of a walkway located in the front yard may not exceed 1.2 metres.
- f) To permit two walkways in the front yard to extend to the right-of-way, whereas the By-law states that a maximum of one walkway per yard is permitted to extend to the right-of-way.

PUBLIC HEARING

Oral Submissions Summary

- [6] Paul Hicks, Agent for the Applicants, provided a slide presentation that included architectural plans and photographs, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request. Mr. Hicks highlighted difficulties of installing the electrical vehicle charger in the rear yard, noting an easement in favour of Hydro One that does not permit such equipment. Also, the rear yard would need to be rearranged to accommodate an electrical vehicle charger, which would impact rear yard amenity space.
- [7] Mr. Hicks emphasized that, although there are several requested variances, the proposal would not negatively impact neighbours. He highlighted several letters of support from area residents, including adjacent neighbours. Mr. Hicks also highlighted that five of the requested variances (a), (b), (d), (e) and (f) relate to the altered front yard landscaping and that variance (c), the setback for the shed in the rear yard, represents an existing condition. He stated that the Owners proceeded with construction and altered the existing driveway and front yard unaware that permits were required and are now attempting to rectify the situation with the necessary approvals.
- [8] The Committee also heard oral submissions from the following individual:

- S. Laubstein, area resident, highlighted concerns relating to loss of greenspace and the negative impact to the streetscape character of Clemow Avenue. He stated that the intent and purpose of the Zoning By-law and the street's heritage value should be maintained.

[9] City Planner Margot Linker highlighted that the Streetscape Character Analysis revealed that front yard parking on this section of Clemow Avenue is not the dominant pattern and therefore, a new front yard parking space is not permitted. She also highlighted that 297 Clemow Avenue is a contributing property in the Clemow-Monkland Driveway and Linden Terrace Heritage Conservation District Plan. Ms. Linker stated that the alterations to the front yard landscaping do not comply with the Plan and negatively impact the heritage value and streetscape of the district.

[10] In response, Mr. Hicks encouraged the Committee to consider environmental concerns and how the proposal addresses retrofitting a property and a neighbourhood.

[11] Following the public hearing, the Committee reserved its decision.

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 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 planning rationale, plans, tree information, photo of the posted sign, and a sign posting declaration.
- City Planning Report received June 21, 2023, in opposition; received June 16, 2023, in opposition; received June 2, 2023, in opposition; received October 12, 2021, in opposition; received September 9, 2021, in opposition, with revisions

- Rideau Valley Conservation Authority, email dated June 15, 2023, with no objections; dated June 2, 2023, with no objections; September 14, 2021, with no objections
- Hydro Ottawa, email dated June 13, 2023, with comments; dated May 31, 2023, with comments; dated October 13, 2021, with no comments; dated September 8, 2021, with no comments
- Ministry of Transportation, email dated June 13, 2023, with no concerns; dated May 24, 2023, with no concerns
- Building Code Services email dated June 9, 2023, with an attached outstanding Order to Comply; dated May 23, 2023, with an attached outstanding Order to Comply
- Transportation Engineering Services, email dated June 16, 2023, with comments; dated May 31, 2023, with comments
- Right-of-Way Branch, email dated October 5, 2021, with comments; dated August 31, 2021, with comments
- Trans-Northern Pipelines Inc., email dated October 2021, with no comments
- A. and E. Brownell, area residents, email dated June 19, 2023, in opposition; dated June 6, 2023, with comments; dated September 3, 2021, with comments
- T. Broughton and G. Abonyi, area residents, email dated June 13, 2023, in support; dated September 12, 2021, in support
- S. Bell and R. Banta, area residents, email dated June 20, 2023, with no objections
- H. Irwin, area resident, email dated June 20, 2023, in support; dated September 13, 2021, in support
- S. Laubstein, area resident, email dated June 1, 2023, with comments
- K. Boyd, area resident, email dated September 12, 2021, in support
- K. Hoang, area resident, email dated September 13, 2021, in support
- M. and B. Jaekl, area residents, email dated September 1, 2021, in opposition
- J. and T. Graham, area residents, email dated September 13, 2021, in support

- W. Ellery, area resident, email dated September 1, 2021, with objections

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 requested variance (c) relating to an existing accessory structure meets all four requirements under subsection 45(1) of the *Planning Act*.
- [16] The Committee notes that the City's Planning, Real Estate and Economic Development Department "opposes" the application. The Planning report highlights that: "the requested variances do not meet the four tests under the Planning Act: they are not minor in terms of their potential cumulative impact, they do not maintain the intent of the Zoning By-law and the Official Plan, and the proposed design is not desirable within the site context and the Clemow-Monkland Driveway and Linden Terrace Heritage Conservation District. The department opposes the requested minor variances and suggests the reinstatement of the front yard landscaping to the previous condition, as the Clemow-Monkland Driveway and Linden Terrace Heritage Conservation District Plan encourages."
- [17] The Committee also notes that the applications seek 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 four-part test highlighted above. The *Planning Act* does not set out a fifth test as to whether an owner has contravened municipal regulations relating to construction. Instead, it is the City's exclusive role to address construction-related concerns and enforce its own by-laws. The Committee has no jurisdiction over such matters.
- [18] The Committee also notes that no compelling evidence was presented that the variance (c) would result in any unacceptable adverse impact on neighbouring properties.
- [19] Considering the circumstances, the Committee finds that, because the existing accessory structure, a shed, fits well in the neighbourhood, requested variance (c) is, 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.

- [20] The Committee also finds that requested variance (c) maintains the general intent and purpose of the Official Plan because the existing accessory structure respects the character of the neighbourhood.
- [21] In addition, the Committee finds that the requested variance (c) maintains the general intent and purpose of the Zoning By-law because the existing shed represents orderly development on the property that is compatible with the neighbourhood.
- [22] Moreover, the Committee finds that the requested variance (c) is minor because the existing accessory structure does not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [23] Conversely, based on the evidence, the Committee is not satisfied that requested variances (a) and (b) for front yard parking, and variances (d), (e) and (f), for alterations to the front yard landscaping, meet all four requirements under subsection 45(1) of the *Planning Act*.
- [24] Specifically, the Committee finds that the requested variances (a), (b), (d), (e), and (f) do not fit well in the neighbourhood 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 these requested variances.
- [25] THE COMMITTEE OF ADJUSTMENT therefore authorizes requested variance (c).
- [26] THE COMMITTEE OF ADJUSTMENT does not authorize requested variances (a), (b), (d), (e), and (f).

"Ann M. Tremblay"
ANN M. TREMBLAY
CHAIR

"John Blatherwick"
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 **June 30, 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 **July 20, 2023**, 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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