

DECISION
MINOR VARIANCE / PERMISSION

Date of Decision:	April 12, 2024
Panel:	2 - Suburban
File No(s):	D08-02-23/A-00263
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Thomas Lanthier
Property Address:	55 Uxbridge Crescent
Ward:	23 – Kanata South
Legal Description:	Part of Lot 16 & 38, Registered Plan 886
Zoning:	R2C
Zoning By-law:	2008-250
Hearing Date:	April 2, 2024, in person and by videoconference

APPLICANT’S PROPOSAL AND PURPOSE OF THE APPLICATION:

- [1] The Owner wants to convert the existing carport into an attached garage, as shown on the plans filed with the application.
- [2] At the hearing on January 16, 2024, the Committee adjourned the application to allow the applicant time to apply for an additional minor variance. The applicant has since submitted the revised application and would like to proceed.

REQUESTED VARIANCES:

- [3] The Owner requires the Committee’s authorization for minor variances from the Zoning By-law as follows:
 - a) To permit a reduced rear yard setback of 3.78 metres, whereas the By-law requires a minimum rear yard setback of 6 metres.
 - b) To permit a reduced rear yard area of 19.46% of the lot area (or 64.38 square metres), whereas the By-law requires a minimum rear yard area of 25% of the lot area (or 82.69 square metres)
 - c) To permit a reduced front yard setback of 4.46 metres, whereas the By-law requires a minimum front yard setback of 4.5 metres.

PUBLIC HEARING

- [4] The Panel Chair administered an oath to Dean Buccholz, Agent for the Applicant, who confirmed that the statutory notice posting requirements were satisfied.

Oral Submissions Summary

- [5] Mr. Buccholz confirmed that the proposed garage, already under construction, would be within the same footprint as the existing carport.
- [6] City Planner Samantha Gatchene confirmed the City had no concerns with the application and, in response to questions from the Committee, also confirmed that the carport complied with the requirements of the Zoning By-law when it was constructed.
- [7] Thomas Lanthier, the Applicant/Owner, was also in attendance.
- [8] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED

Application Must Satisfy Statutory Four-Part Test

- [9] 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

- [10] 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, and a photo of the posted sign.
 - City Planning Report received March 26, 2024, with no concerns; received March 14, 2024, with no concerns; received January 11, 2024, requesting adjournment.
 - Rideau Valley Conservation Authority email received March 27, 2024, with no objections; received March 12, 2024, with no objections; received January 10, 2024, with no objections.

- Ottawa Macdonald-Cartier International Airport Authority email received March 20, 2024, with no comments.
- Ontario Ministry of Transportation email received March 22, 2024; received March 6, 2024, with no comments; received December 19, 2023, with no comments.
- Hydro Ottawa email received March 13, 2024, with no comments; received December 21, 2023, with no comments.
- F. Aheto-Tsegah, resident, email received February 26, 2024, in support.
- M. Detering, resident, email received February 22, 2024, in support.
- C. Veaudry, resident, email received February 26, 2024, in support.
- R. and N. Muise, email received March 18, 2024, with concerns and requesting adjournment; email received January 15, 2024, with concerns.

Effect of Submissions on Decision

- [11] The Committee considered all written and oral submissions relating to the application in making its decision and granted the application.
- [12] Based on the evidence, the Committee is satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.
- [13] The Committee notes that the City's Planning Report raises "no concerns" regarding the application, highlighting that, "the proposed garage will not expand the building's footprint, the side yard and rear yard remain functional, and the enclosure is one storey tall, thus minimizing any privacy impacts to the adjacent neighbour."
- [14] The Committee also notes that no compelling evidence was presented that the variances would result in any unacceptable adverse impact on neighbouring properties.
- [15] Additionally, the Committee 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. As highlighted above, the Committee

may authorize a minor variance if it is satisfied that all four requirements set out in subsection 45(1) of the *Planning Act* are met. 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 by-law are maintained. 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.

- [16] Considering the circumstances, the Committee finds that, because the proposal 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.
- [17] The Committee also finds that the requested variances maintain the general intent and purpose of the Official Plan because the proposal respects the character of the neighbourhood.
- [18] In addition, the Committee finds that the requested variances maintain the general intent and purpose of the Zoning By-law because the proposal represents orderly development that is compatible with the surrounding area.
- [19] Moreover, the Committee finds that the requested variances, both individually and cumulatively, are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.
- [20] THE COMMITTEE OF ADJUSTMENT therefore authorizes the requested variances, **subject to** the variances being tied to the life of the building.

"Fabian Poulin"
FABIAN POULIN
VICE-CHAIR

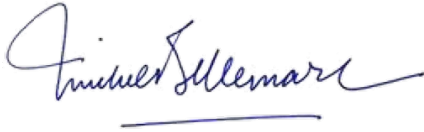
"Jay Baltz"
JAY BALTZ
MEMBER

"George Barrett"
GEORGE BARRETT
MEMBER

"Heather MacLean"
HEATHER MACLEAN
MEMBER

"Julianne Wright"
JULIANNE WRIGHT
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **April 12, 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 **May 2, 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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