

May 23, 2024

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

Attention: Michel Bellemare, Secretary - Treasurer

Dear Mr. Bellemare:

**Reference: 1112 Lisgar Road and 1 Maple Lane
Application for Permission
Our File No.: 124079**

**Committee of Adjustment
Received | Reçu le**

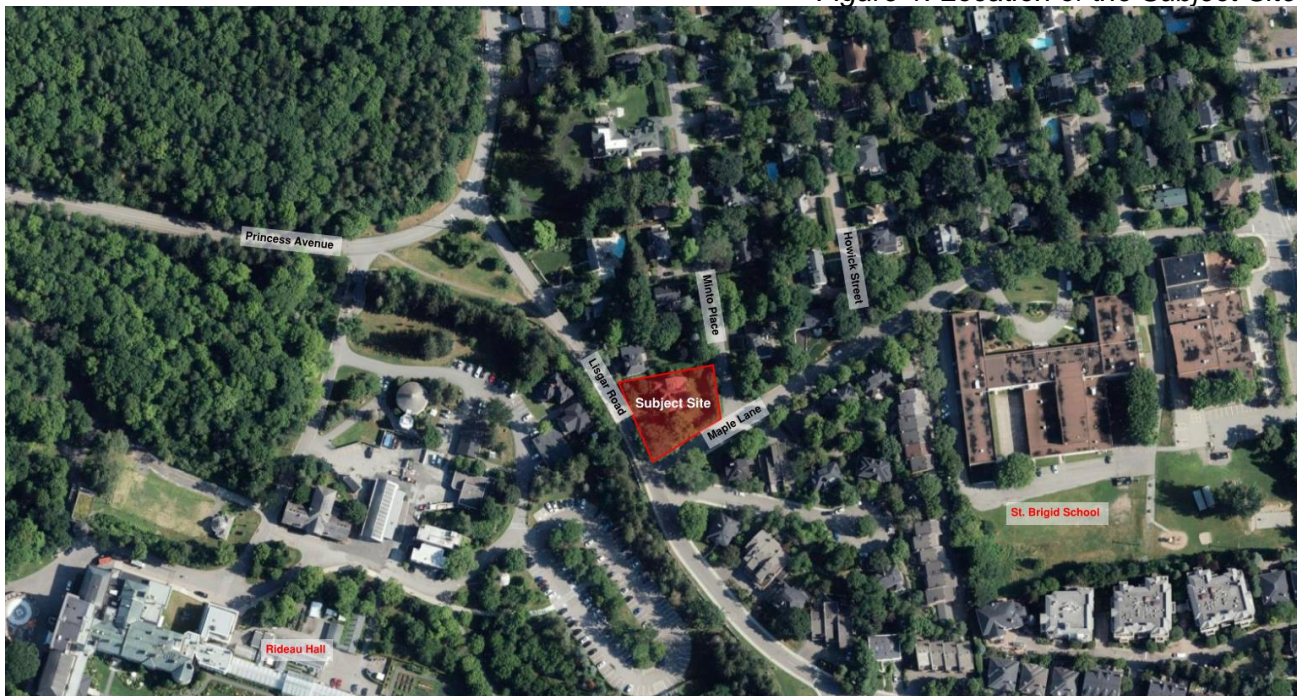
2024-05-24

**City of Ottawa | Ville d'Ottawa
Comité de dérogation**

Novatech has been retained by the owners of the properties municipally known as 1112 Lisgar Road and 1 Maple Lane to prepare and file an application for permission to expand a legally non-complying use. The permission application will facilitate the demolition of the existing legally non-complying semi-detached dwelling and the construction of a new semi-detached dwelling on the Subject Site. A Heritage Permit for the demolition and new construction was approved by City Council on December 6, 2023.

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

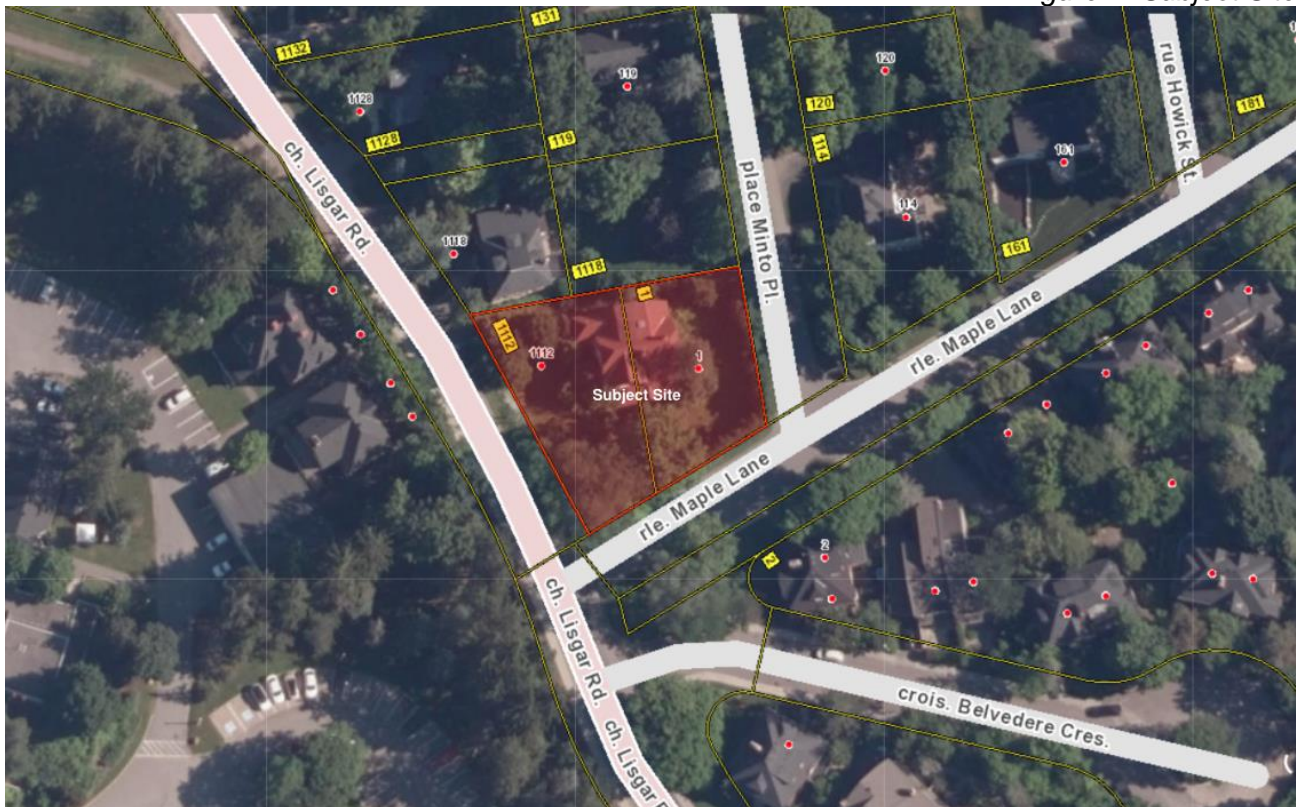


Site and Context

Site

The Subject Site is located in the Rockcliffe Park neighbourhood and is within the City of Ottawa's Rideau-Rockcliffe Ward (Ward 13). The Subject Site consists of two corner lots located at the northeast corner of Lisgar Road and Maple Lane and at the northwest corner of Minto Place and Maple Lane (Figure 2). The Subject Site is in an area bounded by Mariposa Avenue to the north, Springfield Road to the east, Rideau Terrace to the south, and the Rideau Hall Grounds to the west. 1112 Lisgar Road has a frontage of 42.82 metres along Lisgar Road, 13.90 metres along Maple Lane, and a lot area of approximately 771 square metres. 1 Maple Lane has a frontage of 21.78 metres along Maple Lane, 28.32 metres along Minto Place, and a lot area of approximately 677 square metres. The Subject Site is legally known as Lots 128, 129, and 143, Registered Plan 4M-33, City of Ottawa.

Figure 2: Subject Site



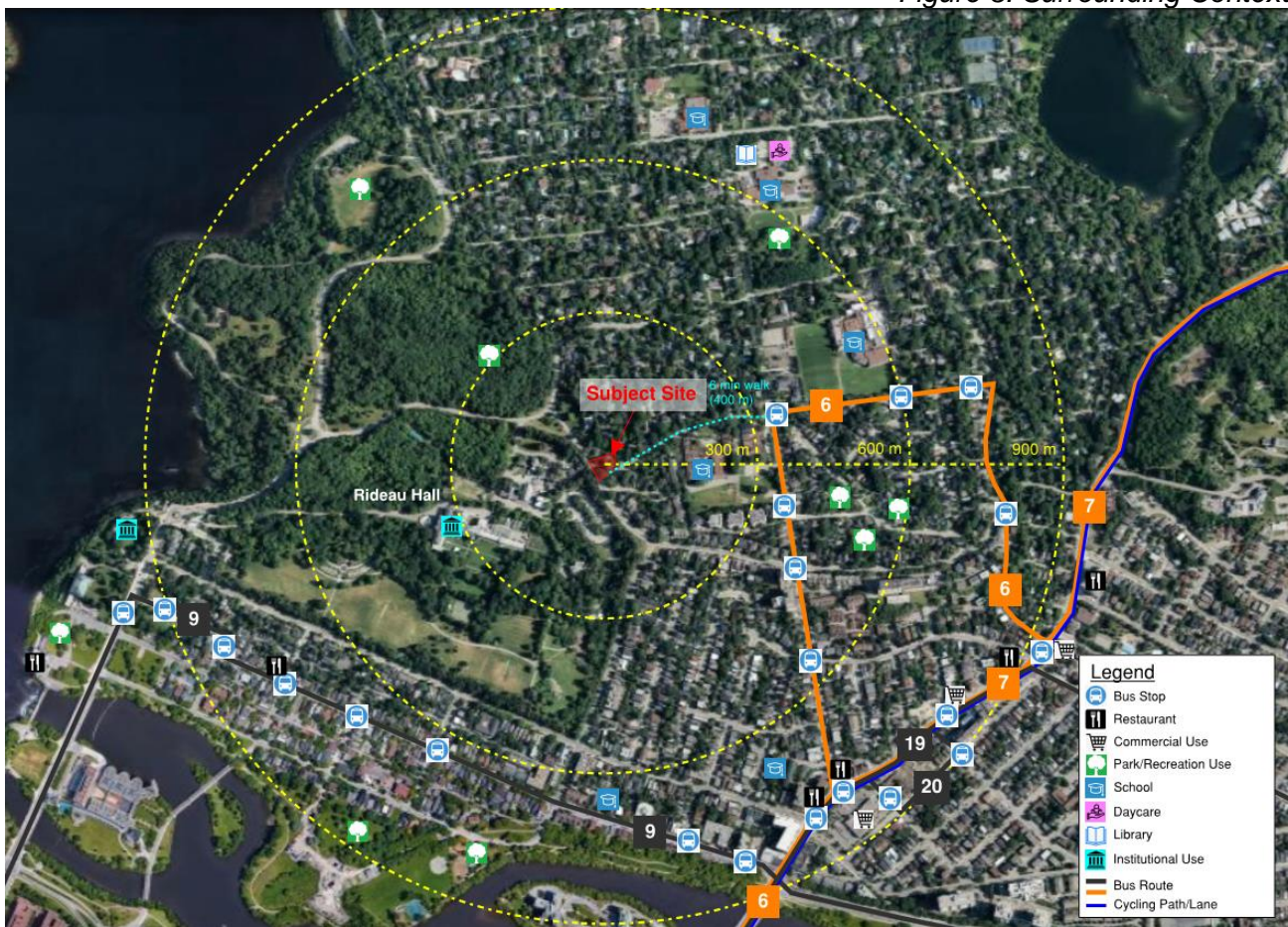
The Subject Site is designated Neighbourhood in the Inner Urban Transect of the City of Ottawa Official Plan (2022). The Subject Site is designated Residential in the Rockcliffe Park Secondary Plan (2022). The Subject Site is located within the Rockcliffe Park Heritage Conservation District. The Subject Site is zoned R1C[1260] in the City of Ottawa Zoning By-law 2008-250.

The Subject Site is currently developed with a legally non-conforming three storey semi-detached dwelling. A semi-detached dwelling is not a permitted use in the R1C[1260] zone.

Surrounding Context

The Subject Site is primarily surrounded by detached dwellings on large lots (Figure 3). Rideau Hall is located directly to the west of the Subject Site and there are a number of embassies within the neighbourhood. The Subject Site is a six-minute walk from a bus stop on Maple Lane, which is serviced by the number 6 frequent bus route. Within 300 metres of the Subject Site, there are primarily residential uses. Rideau Hall and St. Brigid School are also located within 300 metres of the Subject Site. Within 600 metres of the Subject Site is Ashbury College, Lindenlea Park, Village Green Park, and Pine Hill Park. Within 900 metres of the Subject Site, there are some commercial uses along Beechwood Avenue. There are also several schools, including Rockcliffe Park Public School, Elmwood School, and Fern Hill School, as well as a number of parks such as Stanley Park and the Rockcliffe Rockeries.

Figure 3: Surrounding Context



Proposed Development

The permission application is required to facilitate the demolition and reconstruction of a legally non-conforming semi-detached dwelling on the Subject Site. The proposed semi-detached dwelling will maintain the three-storey form of the existing building and will include driveways facing Lisgar Road and Minto Place and extensive landscaping along Maple Lane. The proposed semi-detached dwelling will constitute an expansion of the existing legally non-conforming semi-detached dwelling with respect to the rear yard setback, corner side yard setback, lot coverage, and the Floor Space

Index (FSI). A Heritage Permit for the proposed demolition and construction has been obtained by the property owner and is included with the submission package.

Figure 4: Site Plan Excerpt

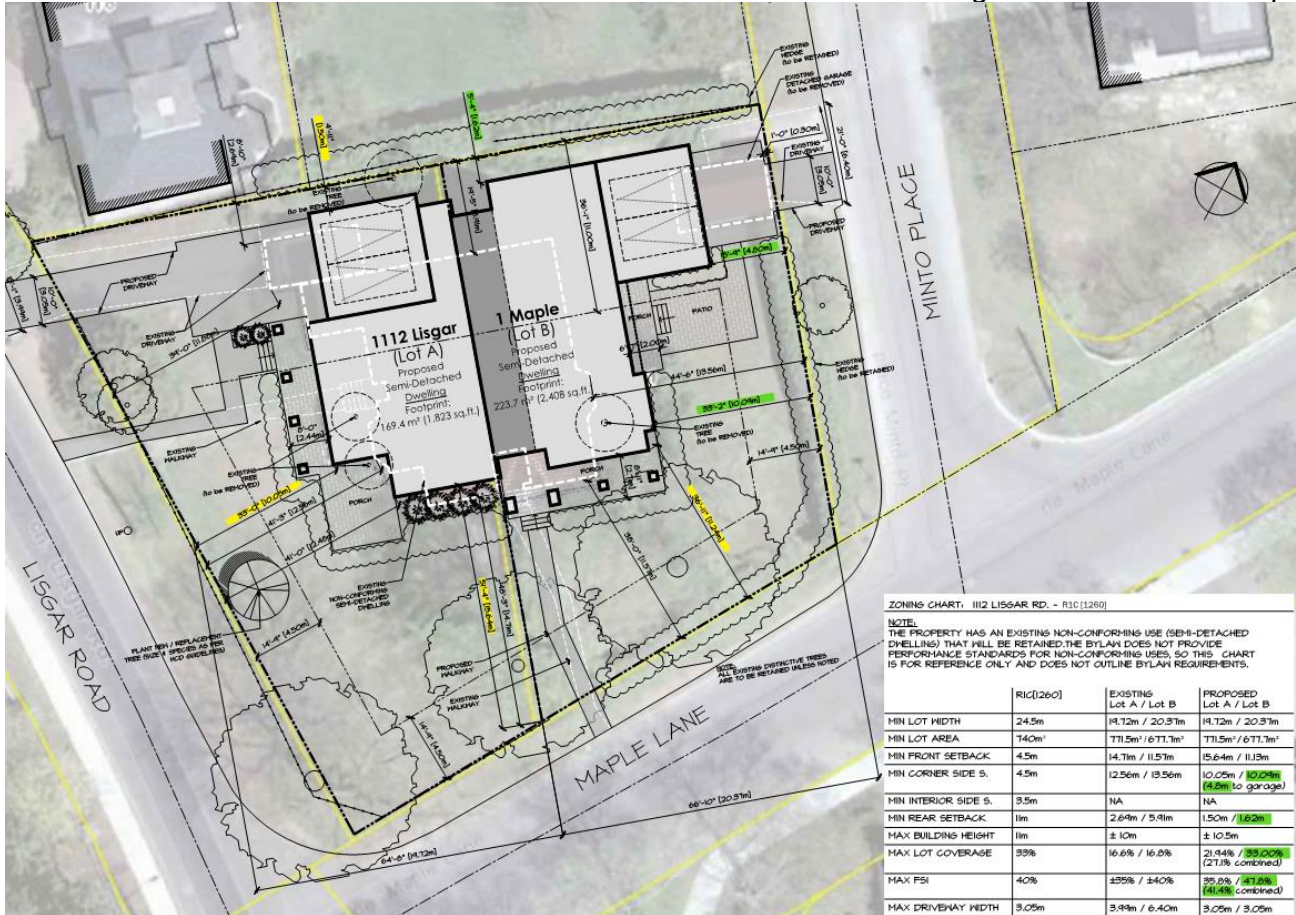


Figure 5: Elevations



Figure 6: Renderings of the Proposed Semi-Detached Dwelling



Permission Application

The requested permission for this application is identified below:

- a) The Owner requires Permission from the Committee of Adjustment to enlarge or extend the reconstruction of the existing legally non-conforming semi-detached dwelling.

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 a legally non-conforming semi-detached use on the Subject Site is desirable for the appropriate use of the land. The existing semi-detached dwelling on the Subject

Site has been neglected for many years and is in a state of disrepair. As part of the Heritage Permit application, the property owner engaged the services of two engineering firms who recommended that the existing semi-detached dwelling be demolished. The demolition and reconstruction of a semi-detached dwelling on the Subject Site is desirable for the use of the land and will allow for a more effective use of the site.

Figure 7: Existing Semi-Detached Dwelling on the Subject Site



Figure 8: Proposed Semi-Detached Dwelling on the Subject Site



The proposed semi-detached dwelling will provide more living space for the property owners while maintaining the park-like qualities of the Rockcliffe Park neighbourhood. The proposed development has been designed to retain some of the architectural features of the existing building and is sympathetic to the established heritage character of the streetscape. Generous front and corner side yard setbacks will continue to be provided and the dominance of soft landscaping over hard landscaping will be retained. Seven of eight of the distinct trees on the Subject Site will be retained with the proposed development, which will help maintain the heritage character of the area.

A Heritage Permit for the demolition of the existing building and the proposed reconstruction was recommended by Heritage Planning staff and approved by City Council on December 6, 2023. Heritage staff worked extensively with the property owners to ensure that the proposed semi-detached dwelling is in line with the policies and guidelines of the Rockcliffe Park HCD Plan and is appropriate and desirable for the neighbourhood.

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 semi-detached dwelling is a legally non-conforming use and is not a permitted use in the R1C[1260] zone. The construction of a new semi-detached dwelling will constitute an expansion

of the existing legally non-conforming rights. Tables 1 and 2 illustrate the existing and proposed setbacks for Lot A and Lot B respectively.

Table 1: Setbacks of the Existing and Proposed Semi-Detached Dwelling on Lot A

Zoning Provision	Existing	Proposed
Lot Width (m)	19.72 m	19.72 m
Lot Area (m ²)	771.5 m ²	771.5 m ²
Front Yard Setback (m)	14.71 m	15.64 m
Corner Side Yard Setback (m)	12.56 m	10.05 m
Interior Side Yard Setback (m)	N/A	N/A
Rear Yard Setback (m)	2.69 m	1.5 m
Building Height	10 m	10.5 m
Lot Coverage	16.6%	21.94%
Floor Space Index	35%	35.8%

Table 2: Setbacks of the Existing and Proposed Semi-Detached Dwelling on Lot B

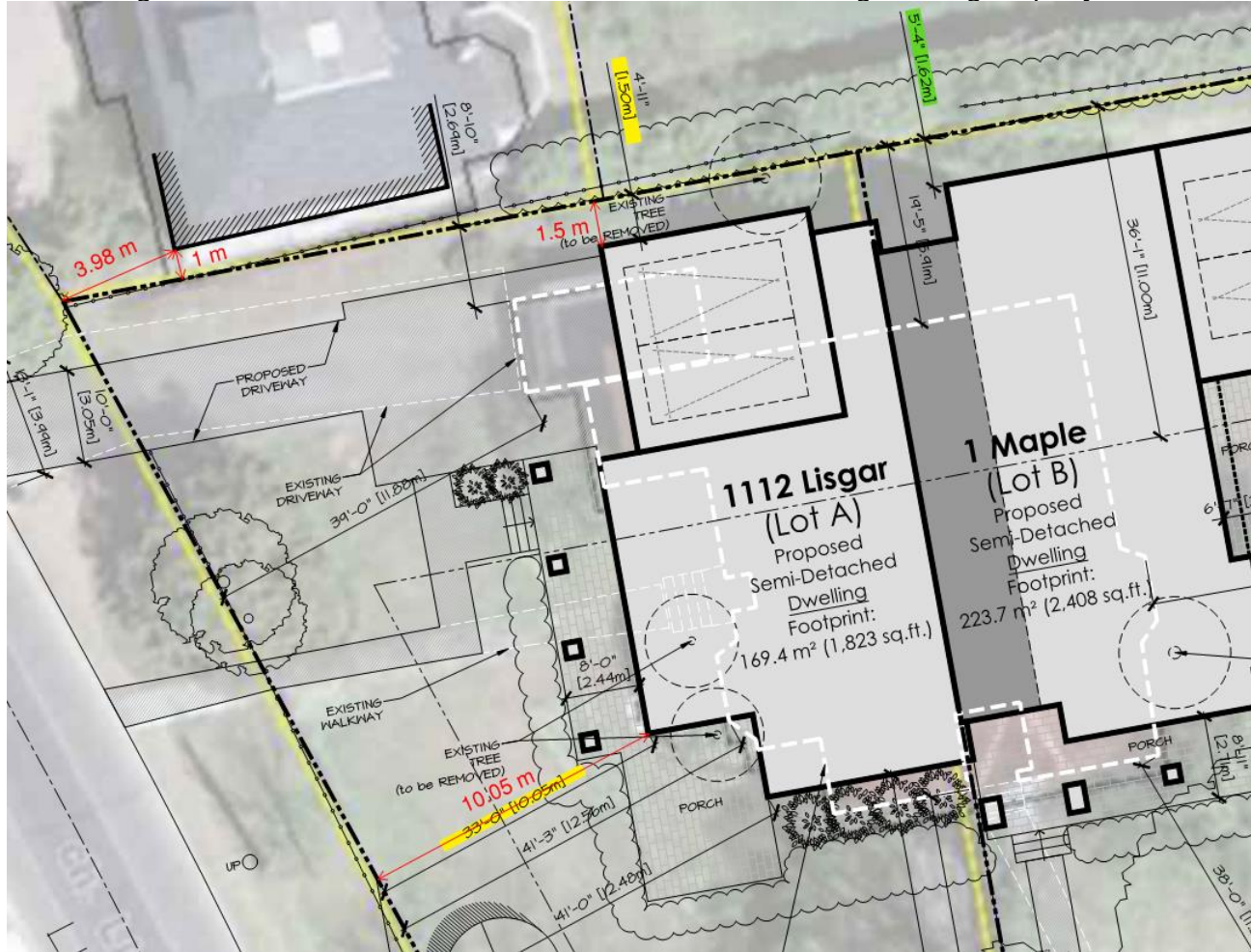
Zoning Provision	Existing	Proposed
Lot Width (m)	20.37 m	20.37 m
Lot Area (m ²)	677.7 m ²	677.7 m ²
Front Yard Setback (m)	11.57 m	11.13 m
Corner Side Yard Setback (m)	13.56 m	4.8 m
Interior Side Yard Setback (m)	N/A	N/A
Rear Yard Setback (m)	5.91 m	1.62 m
Building Height	10 m	10.5 m
Lot Coverage	16.8%	33%
Floor Space Index	40%	47.8%

The proposed new semi-detached dwelling will result in a reduction of the rear yard setback and the corner side yard setback and an increase in the lot coverage and floor space index.

The proposed rear yard setback constitutes a reduction of around 1.2 metres for Lot A and around 4.3 metres for Lot B. Despite the reduced setbacks, there will be minimal impact on the neighbour to the north. From the street, the proposed rear yard setback will be perceived as a side yard setback due to the Subject Site's location at the end of the street. The proposed 1.5 metre setback will be in character with the existing side yard setbacks of neighbouring properties, including the property directly to the north which has an interior side yard setback of 1 metre from the shared lot line. In addition, the lot to the rear of Lot B is currently vacant and therefore will not be impacted by the reduced rear yard setback.

The proposed corner side yard setback constitutes a reduction of around 2.5 metres for Lot A and around 8.8 metres for Lot B. Despite the reduced corner side yard setback, the proposed building will not extend beyond the front wall of the neighbouring property to the north, ensuring that there is minimal overlook and privacy impacts on the neighbouring dwelling. For Lot B, the proposed corner side yard setback of 4.8 metres is measured from the front wall of the garage. Most of the semi-detached dwelling will be setback more than 10 metres from the eastern lot line. The proposed corner side yard setbacks will still provide adequate space for tree plantings and will maintain the park-like character of the neighbourhood.

Figure 9: Side Yard Setback and Front Yard Setback of Neighbouring Property to the North



The proposed semi-detached dwelling constitutes an increase of around 5.3% in the lot coverage for Lot A and around 16.2% for Lot B. The proposed development also constitutes an increase in the floor space index by 0.8% for Lot A and 7.8% for Lot B. Despite the increases in lot coverage and FSI, the proposed semi-detached dwelling maintains the park-like character of the Rockcliffe Park neighbourhood. There is space for tree plantings and landscaping in the front and corner side yards and the site design will maintain the dominance of soft landscaping over hardscaping, which is a key heritage attribute of the Rockcliffe Park Heritage Conservation District.

The proposed semi-detached dwelling will have a minimal impact on neighbouring properties. The reduced rear yard setback and corner side yard setback will have minimal overlook and privacy impacts on the neighbouring property to the north and will be in character with the neighbouring properties. Despite the reduced setbacks and increased lot coverage and FSI, there will be adequate space for tree planting and landscaping. The proposal will retain the park-like character and dominance of soft landscaping that is a core characteristic of the Rockcliffe Park Heritage Conservation District.

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 semi-detached dwelling will more effectively use the Subject Site and provide additional living space for the residents and their families while maintaining the heritage attributes of the Rockcliffe Park Heritage District.

Policy 1.7.1 states:

“Long-term economic prosperity should be supported by:

- a) *promoting opportunities for economic development and community investment-readiness;*
- b) *encouraging residential uses to respond to dynamic market-based needs and provide necessary housing supply and range of housing options for a diverse workforce;*
- c) *optimizing the long-term availability and use of land, resources, infrastructure and public service facilities;*
- d) *maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets;*
- e) *encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including built heritage resources and cultural heritage landscapes;*
- f) *promoting the redevelopment of brownfield sites;*
- g) *providing for an efficient, cost-effective, reliable multimodal transportation system that is integrated with adjacent systems and those of other jurisdictions, and is appropriate to address projected needs to support the movement of goods and people;*
- h) *providing opportunities for sustainable tourism development;*
- i) *sustaining and enhancing the viability of the agricultural system through protecting agricultural resources, minimizing land use conflicts, providing opportunities to support local food, and maintaining and improving the agri-food network;*
- j) *promoting energy conservation and providing opportunities for increased energy supply;*
- k) *minimizing negative impacts from a changing climate and considering the ecological benefits provided by nature; and*
- l) *encouraging efficient and coordinated communications and telecommunications infrastructure.”*

The proposed semi-detached dwelling promotes a well-designed built form that helps define the character of the Rockcliffe Park neighbourhood and conserves the features of the Heritage Conservation District. The proposed building design is inspired by the style, form, and location of the existing house on the property. The proposed height, massing, and materiality of the proposed semi-detached dwelling is consistent with other properties in the HCD. Despite the reduction in the proposed setbacks and the increase in the lot coverage and FSI, the proposal will maintain the park-like setting that is characteristic of Rockcliffe Park and there will be space for additional tree planting.

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

Conclusion

The proposed permission application at 1112 Lisgar Road and 1 Maple Lane 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, as demonstrated by City Council's decision to issue a Heritage Permit for the proposed development. The proposed expansion will have minimal impact on neighbouring 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 1 (one original copy)
- Complete Permission Application Form 2 (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)
- Heritage Permit for 1112 Lisgar Road and 1 Maple Lane (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.