

May 31, 2024

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

Committee of Adjustment
Received | Reçu le

2024-06-03

City of Ottawa | Ville d'Ottawa
Comité de dérogation

Attention: Michel Bellemare, Secretary - Treasurer

Dear Mr. Bellemare:

**This document is presented in the language it was provided.
Ce document est présenté dans la langue dans laquelle il a été fourni.**

**Reference: 998 Colonel By Drive
Application for Permission
Our File No.: 124081**

Novatech has been retained by the owners of the property municipally known as 998 Colonel By Drive to prepare and file an application for permission to expand a legally non-conforming use. The permission application will facilitate the construction of an addition to the east of the Subject Site.

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



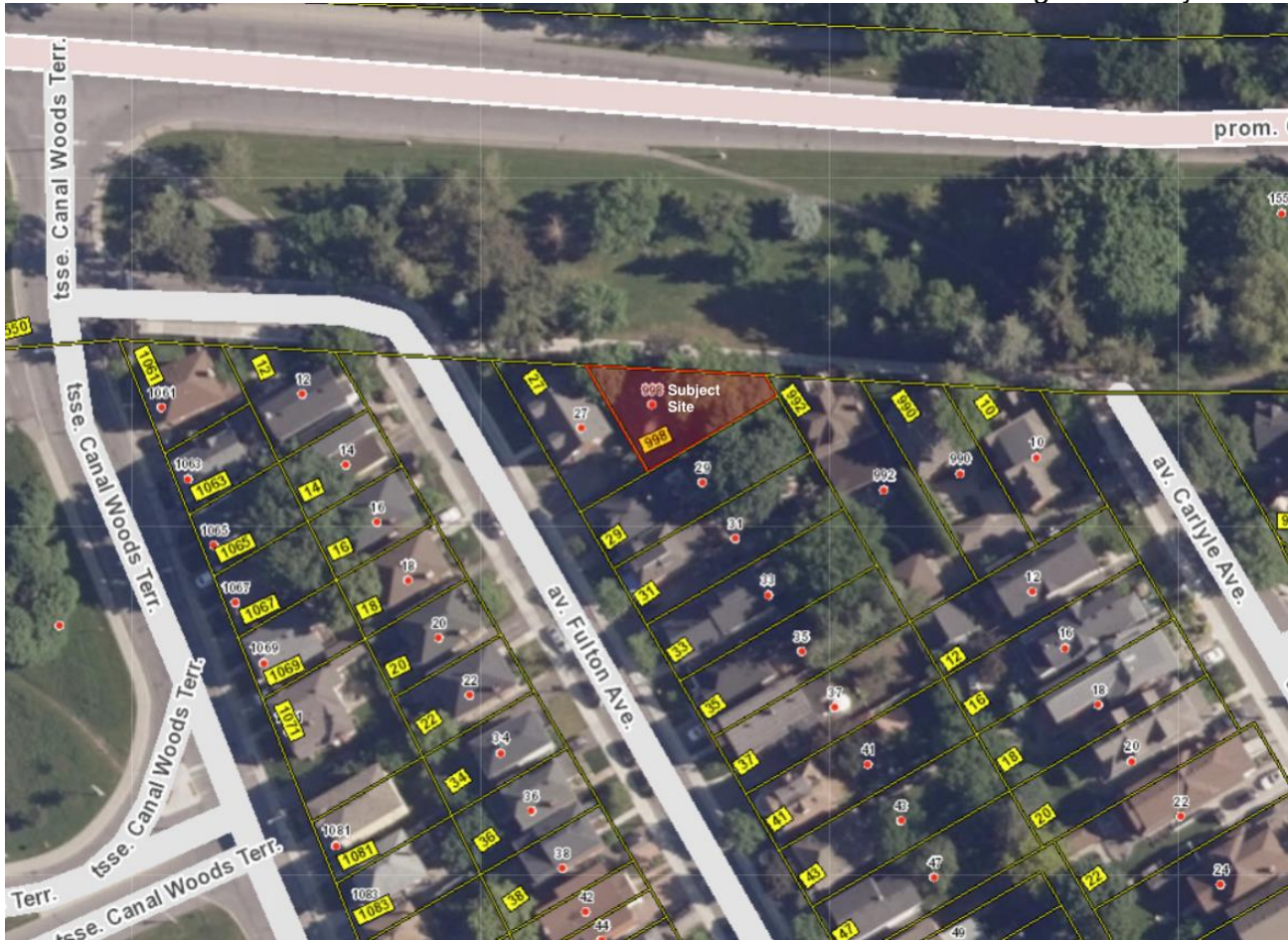
Site and Context

Site

The Subject Site is located in the Old Ottawa South neighbourhood and is within the City of Ottawa's Capital Ward (Ward 17). The Subject Site is an irregularly shaped lot that does not have frontage on

an improved public street. The Subject Site has vehicular access to Fulton Avenue through an easement over a shared driveway at 27 Fulton Avenue. The Subject Site is in an area bounded by Colonel By Drive and the Rideau Canal to the north, Bronson Avenue to the west, Aylmer Avenue to the south, and Seneca Street to the east. The Subject Site has a lot area of approximately 261.95 square metres. The Subject Site is legally known as Part of Lots 20 and 21, Registered Plan 173, City of Ottawa.

Figure 2: Subject Site



The Subject Site is within the Inner Urban Transect and is part of the Rideau Canal Special District. The Subject Site is zoned R3Q[2051] H(9) in the City of Ottawa Zoning By-law 2008-250 and is subject to the Mature Neighbourhoods Overlay and the Heritage Overlay.

The Subject Site is currently developed with a legally non-conforming detached dwelling. The Subject Site does not have frontage on an improved public street, as required by Section 59 of the Zoning By-law. Section 59(1) states:

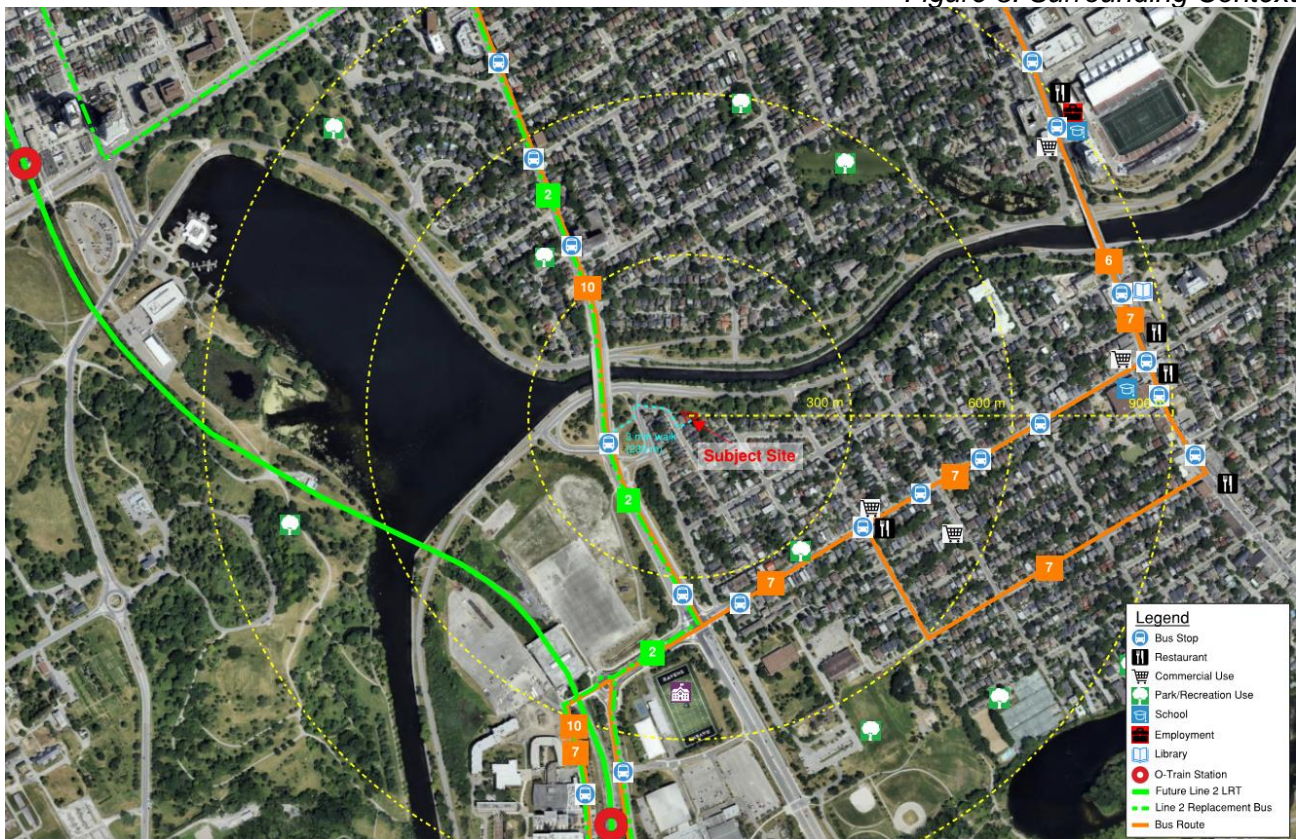
“No person shall develop or otherwise use any lot unless that land abuts an improved public street for a distance of at least 3.0 metres”

The development or use of the Subject Site is not permitted according to the Zoning By-law. The existing building on the Subject Site is a legally non-conforming use.

Surrounding Context

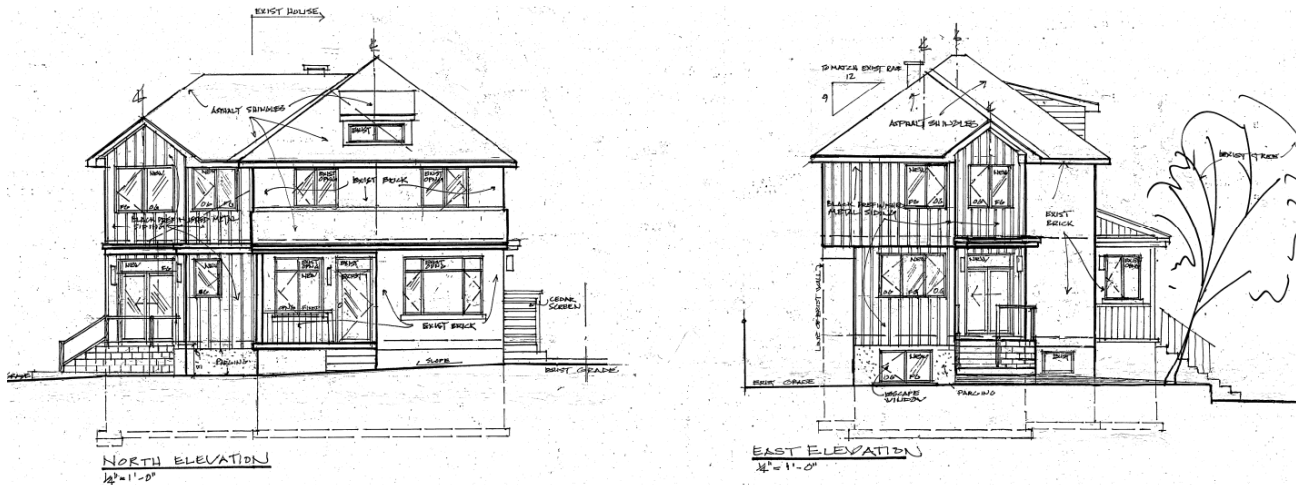
The Subject Site is in an area characterized by residential uses, with primarily detached and semi-detached dwellings in proximity to the Subject Site. The Subject Site is within walking distance of the Rideau Canal and is a 3 minute walk away from a bus stop on Bronson Avenue, which is serviced by the number 10 frequent bus route and the LRT Line 2 replacement bus. Within 300 metres of the Subject Site, there are a range of residential uses, including detached dwellings, semi-detached dwellings, and townhouse dwellings. The Rideau Canal is also located within 300 metres of the Subject Site. Within 600 metres of the Subject Site, there are number of parks, including Brown’s Inlet Park, Capital Park, Percy Taverner Park, Eugene Forsey Park, and Dow’s Lake. Carleton University is also within 600 metres of the Subject Site. Within 900 metres of the Subject Site, there are some commercial uses along Bank Street to the east. The Carleton LRT station is also located within 900 metres of the Subject Site.

Figure 3: Surrounding Context



Proposed Development

The permission application is required to facilitate an addition to the east of the existing detached dwelling. The proposed addition will be two storeys and will replace an existing one storey addition. The proposed addition is part of a substantial renovation being undertaken by the current property owner prior to the owner and their family moving into the existing dwelling. The proposed addition will constitute an expansion of the existing legally non-conforming detached dwelling with respect to the interior side yard setback (measured from the eastern lot line) and the rear yard setback (measured from the southern lot line).



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 existing legally non-conforming detached dwelling for a proposed addition in the side yard.

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 use on the Subject Site is desirable for the appropriate use of the land. The proposed addition is part of a larger renovation to the existing building that will provide for a more functional layout for the current homeowner. The proposed addition will provide more living space for the owner and their family. The proposal will maintain generous soft landscaping in the side yard and will provide for new planting beds to the north of the existing dwelling.

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 Subject Site does not have frontage on an improved public street, as required by Section 59 of the Zoning By-law. Section 59(1) states:

“No person shall develop or otherwise use any lot unless that land abuts an improved public street for a distance of at least 3.0 metres”

The development or use of the Subject Site is not permitted according to the Zoning By-law. The existing building on the Subject Site is a legally non-conforming use. The construction of the addition will constitute an expansion of the existing legally non-conforming rights.

The proposed addition will expand into the eastern side yard and the rear yard. The proposed addition will result in a reduction of the eastern side yard setback but will not extend further into the rear yard than the existing building.

The proposed interior side yard setback constitutes a reduction of approximately 1.5 metres from the existing interior side yard setback. Despite the reduction, a setback of approximately 8.3 metres will be maintained between the building and the eastern property line. This will provide adequate separation between the proposed addition and the neighbouring property to the east, buffering the neighbouring property from any potential impacts.

The proposed addition will also expand into the required rear yard. However, the addition will not extend further into the rear yard than the existing building. There will be minimal impact on the neighbouring property to the south. The south side of the addition will only include one window in the second storey washroom, minimizing any potential overlook impacts.

The proposed addition will have a minimal impact on neighbouring properties. The expansion into the interior side yard and rear yard will have minimal overlook and privacy impacts on the neighbouring properties to the east and south. Despite the reduction in the interior side yard setback, adequate separation and buffering will be provided between the proposed addition and the neighbouring property to the north.

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 addition will provide additional living space and will allow for a more effective layout of the existing dwelling for the owner and their family. There will be no health or safety concerns from the proposed addition and the proposal will have a minimal impact on neighbouring properties.

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

Conclusion

The proposed permission application at 998 Colonel By Drive conforms to Section 45(2) of the Planning Act. The proposed addition is appropriate and desirable for the use of the land and the surrounding area. The proposed expansion will have minimal impact on neighbouring properties. The permission application is also consistent with the Provincial Policy Statement and will more effectively use the Subject Site. 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 (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)

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.