

DECISION
MINOR VARIANCE / PERMISSION

Date of Decision:	October 27, 2023
Panel:	1 - Urban
File No(s):	D08-02-23/A-00224
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Nadezhda Solovyova
Property Address:	284 Churchill Avenue
Ward:	15 - Kichissippi
Legal Description:	Lot 345, Plan 4M-28
Zoning:	R3E
Zoning By-law:	2008-250
Hearing Date:	October 18, 2023, in person and by videoconference

APPLICANT'S PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] At its hearings in June and October 2022, the Committee of Adjustment refused two different minor variance applications (D08-02-21/A-00213 & D08-02-22/A-00276). The Owner has revised their plans and now wants to proceed with a new application.
- [2] The Owner is proposing to demolish the existing detached dwelling for the construction of a semi-detached dwelling with additional dwelling units, as shown on plans filed with the Committee.

REQUESTED VARIANCES:

- [3] The Owner/Applicant requires the Committee's authorization for minor variances from the Zoning By-law as follows:

284 Churchill Avenue North, the northerly half of the proposed semi-detached dwelling:

- a. To permit a reduced lot width of 7.61 metres, whereas the By-law requires minimum lot width of 9.0 metres.

- b. To permit a reduced lot area of 231 square metres, whereas the By-law requires a minimum lot area of 270 square metres.
- c. To permit a front-facing attached garage, whereas the By-law states that a front facing garage is not permitted as per the outcome of the Streetscape Character Analysis.
- d. To permit secondary dwelling units with entrances added to the front wall, whereas the By-law requires that the addition of secondary dwelling units must not result in any new doorway entrance added to the front wall.
- e. To permit two secondary dwelling units per principal dwelling unit in the case of a semi-detached dwelling, whereas the By-law permits maximum of one secondary dwelling unit is permitted per principal dwelling unit in the case of a semi-detached dwelling.
- f. To permit two secondary dwelling units to be 66% of the gross floor area of the building including the basement, whereas the By-law states that a secondary dwelling unit must not be greater in size than an amount equal to 40% of the total gross floor area of its principal dwelling unit including the gross floor area of the basement.

286 Churchill Avenue North, the southerly half of the proposed semi-detached dwelling:

- g. To permit a reduced lot width of 7.61 metres, whereas the By-law requires minimum lot width of 9.0 metres.
- h. To permit a reduced lot area of 231 square metres, whereas the By-law requires a minimum lot area of 270 square metres.
- i. To permit a front-facing attached garage, whereas the By-law states that a front facing garage is not permitted as per the outcome of the Streetscape Character Analysis.
- j. To permit secondary dwelling units with entrances added to the front wall, whereas the By-law requires that the addition of secondary dwelling units must not result in any new doorway entrance added to the front wall.
- k. To permit two secondary dwelling units per principal dwelling unit in the case of a semi-detached dwelling, whereas the By-law permits maximum of one secondary dwelling unit is permitted per principal dwelling unit in the case of a semi-detached dwelling.
- l. To permit two secondary dwelling units to be 66% of the gross floor area of the building including the basement, whereas the By-law states that a secondary dwelling unit must not be greater in size than an amount equal to

40% of the total gross floor area of its principal dwelling unit including the gross floor area of the basement.

The Applications indicate that the property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

Oral Submissions Summary

- [4] Chris Jalkotzy, Agent for the Applicant, provided a slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request. Mr. Jalkotzy responded to questions from the Committee and highlighted that there are several examples of front-facing garages within the broader neighbourhood context, however abutting properties to the north and east side of the subject property are not included among those examples.
- [5] In response to a question from the Committee regarding the extent to which this application differs from the previous two applications that were refused by the Committee, Mr. Jalkotzy indicated that variances (a), (b), (c), (g), (h), and (i) are the same as the previous applications. However, the proposal has undergone significant design changes, including the location of the entrances to the additional dwelling units, a new peaked roof, and a reduced height of the retaining walls on either side of the property by maintaining more of the front yard topography. Mr. Jalkotzy also highlighted that variances (d), (e), (f), (j), (k), and (l) are new to the proposal.
- [6] The Committee deliberated over whether the doctrine of *res judicata* (a matter already adjudicated or decided) applies in this case. The Committee agreed that the details of the application were sufficiently changed from the prior two so that *res judicata* is not at issue.
- [7] Mr. Jalkotzy further responded to questions from the Committee and confirmed that providing on-site parking is not a requirement of the Zoning By-law.
- [8] The Committee also heard oral submissions from the following individuals:
- T. Truong, resident, highlighted that all previous concerns she had relating to fencing along the property, snow removal, and the grading and drainage system have since been addressed by Mr. Jalkotzy.
 - P. Le Saux, Co-President of the Westboro Beach Community Association, highlighted that all previous concerns she had relating to parking, snow removal, the retaining wall on the property, and collaboration with the community, have since been addressed by Mr. Jalkotzy.

- S. Fletcher, resident, stated that the plans have improved since they were originally submitted but raised concerns regarding the retaining wall on the property and snow removal.

[9] In response to resident concerns, Mr. Jalkotzy highlighted that the municipality mandated a development agreement condition, which would handle matters relating to the removal and reinstatement of the retaining wall. He also confirmed that the Applicant was agreeable to the City's requested condition of approval. Additionally, Mr. Jalkotzy stated that the driveway is 2.2 metres from the property line on the North side, noting that this will provide room for snow removal.

[10] City Planner Margot Linker was also present.

[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 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, parcel registry, revised planning rationale, revised plans, tree information report, a photo of the posted sign, and a sign posting declaration.
- City Planning Report received by email October 12, 2023, with some concerns.
- Rideau Valley Conservation Authority email dated October 12, 2023, with no objections.
- Hydro Ottawa email dated October 5, 2023, with no concerns.
- T. Truong, resident, email dated September 29, 2023, with concerns.

- P. Le Saux, Co-President Westboro Beach Community Association, email dated October 10, 2023, with concerns.
- H. Beffert and M. Dougan, residents, email dated October 12, 2023, with concerns.

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 variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l) meet all four requirements under subsection 45(1) of the *Planning Act*.
- [16] The Committee notes that the City's Planning Report raises "no concerns" regarding variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), and "concerns" with variances (c) and (i), highlighting that, "an increase in the presence of front-facing garages would enhance the prominence of the automobile on the streetscape, which would be out of keeping with the street's character." The report also highlights that, "the addition of new front-facing garages could alter future Streetscape Character Analysis results, tipping the scales in favour of front-facing garages. This may have the effect of changing the zoning permissions on this street, which is not the intent of the Zoning By-law."
- [17] The Committee also notes that no compelling evidence was presented that variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l) would result in any unacceptable adverse impact on neighbouring properties.
- [18] Considering the circumstances, the Committee finds that, because the proposal fits well in the area, variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l) 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.
- [19] The Committee also finds that variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l) maintain the general intent and purpose of the Official Plan because the proposal respects the character of the neighbourhood.
- [20] In addition, the Committee finds that variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l) maintain the general intent and purpose of the Zoning By-law because the proposal represents orderly development on the property that is compatible with the neighbourhood.
- [21] Moreover, the Committee finds that variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), both individually and cumulatively, are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.

- [22] Conversely, based on the evidence, the majority of the Committee (Member S. Lécuyer dissenting) is not satisfied that requested variances (c) and (i) to permit front-facing garages meet all four requirements under subsection 45(1) of the *Planning Act*.
- [23] Specifically, the majority of the Committee finds insufficient evidence was presented that variances (c) and (i) are, from a planning a 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. Failing one of the four statutory requirements, the Committee is unable to authorize the proposed front-facing garages.
- [24] THE COMMITTEE OF ADJUSTMENT therefore authorizes variances (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), **subject to:**
- a. The location and size of the proposed construction being in accordance with the site plan filed, Committee of Adjustment date stamped October 10, 2023, and the elevations filed, Committee of Adjustment date stamped September 12, 2023, as they relate to the requested variances.
 - b. Prior to the issuance of a building permit, the Owner/Applicant(s) shall enter into a Development Agreement or a Letter of Undertaking (LOU) with the City of Ottawa, at the expense of the Owner/Applicant(s), and to the satisfaction of the Development Review Manager of the Planning, Real Estate, and Economic Development Department, or his/her designate. A development agreement is to be registered on Title of the property (where applicable) and shall include the following:
 - i. the Owner/Applicant agrees to provide a revised Tree Information Report, to the satisfaction of the Development Review Manager of the relevant Branch within the Planning, Real Estate and Economic Development Department, or his/her designate, updated to reflect the most recent site and grading plans, and providing mitigation measures for the protection and retention of the City-owned oak tree (#1).
 - ii. The Owner(s) agree to provide securities for a period of 3 years following the final occupancy permit, which is equivalent to the value of the tree(s) to be protected (tree #1). The Owner(s) agree that the security shall be returned to the owner only upon the City having received a report from an arborist or appropriate professional confirming that tree #1 remains in good health, condition, and is structurally stable. The Owner(s) acknowledge and agree that if, in the opinion of the City Forester and/or the General Manager, Planning, Infrastructure, and Economic

Development, the report indicates that tree #1 is declining and must be removed, the Security, in its entirety, will be forfeited.

[25] THE COMMITTEE OF ADJUSTMENT does not authorize variances (c) and (i).

[26] *Member S. Lécuyer dissents on the refusal of variances (c) and (i), noting several examples of existing front-facing garages in the neighbourhood.*

"Ann M. Tremblay"
ANN M. TREMBLAY
CHAIR

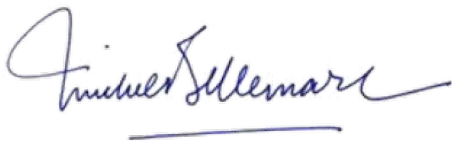
"John Blatherwick"
JOHN BLATHERWICK
MEMBER

"Simon Coakeley"
SIMON COAKELEY
MEMBER

"Arto Keklikian"
ARTO KEKLIKIAN
MEMBER

"Sharon Lécuyer"
SHARON LÉCUYER
MEMBER
with noted dissent

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **October 27, 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 **November 16, 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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