

**DECISION
MINOR VARIANCE**

Date of Decision:	August 16, 2024
Panel:	1 - Urban
File No.:	D08-02-24/A-00139
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Applicants:	Marc Gregoire and Heather Trail
Property Address:	18 Elliot Avenue
Ward:	17 – Capital
Legal Description:	Lot 36, Registered Plan 261322
Zoning:	R1TT
Zoning By-law:	2008-250
Heard:	August 7, 2024, in person and by videoconference

APPLICANTS' PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] The Applicants want to construct a carport on the west side of the existing dwelling, as shown on the plans filed with the application.

REQUESTED VARIANCES

- [2] The Applicants require the Committee's authorization for minor variances from the Zoning By-law as follows:
- a) To permit a front yard parking space, whereas the Zoning By-Law does not permit front yard parking based on the conclusions of a Streetscape Character Analysis.
 - b) To permit a reduced parking space length of 4.9 **4.44** metres, whereas the Zoning By-law requires a minimum parking spot length of 5.2 metres.
 - c) To permit a reduced rear yard setback of 0.86 metres, or 3% of the lot depth, whereas the Zoning By-law requires a minimum rear yard setback of 28% of the lot depth, or in this case, 8.53 metres.
 - d) To permit a reduced (westerly) interior side yard setback of 0.3 metres, whereas the Zoning By-law requires that both interior side yards total 1.8 metres, with no one side less than 0.6 metres.

- e) To permit a front-facing carport setback from the principal entrance way whereas the Zoning By-law does not permit a front-facing carport based on the conclusions of a Streetscape Character Analysis.

[3] The subject property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

Oral Submissions Summary

- [4] Heather Trail, 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. Ms. Trail summarized the challenges posed by the pre-existing parking configuration for her family and her daughter specifically, highlighting the time and space required for her to disassemble a wheelchair and enter a vehicle, and the fact that she is unable to move other vehicles that may be parked in the single laneway. Ms. Trail also referred the Committee to policy 2.2.4 in the Official Plan, which encourages healthy and inclusive communities and consideration for health and equity implications in decision-making.
- [5] In response to questions from the Committee, Ms. Trail explained that installing additional parking in the rear yard would result in the loss of private amenity space and soft landscaping, may cause drainage issues, and would require the demolition of an existing detached garage. She also explained that street parking would be unsafe for her daughter and may interfere with an existing school bus stop, and would be less desirable for area residents, who she indicated were supportive of the application.
- [6] City Forester Julian Alvarez-Barkham summarized his concerns regarding the loss of soft landscaping within the City right of way.
- [7] In response to a question regarding the status of the front yard parking space, Ms. Trail also confirmed that the work of installing the parking space had already been completed.
- [8] City Planner Samantha Gatchene submitted that a redesign of the parking space to the rear of the property may affect the functionality of the site. She also highlighted that, based on the application materials, requested variance (b) should be amended to read as follows:
- b) To permit a reduced parking space length of ~~4.9~~ **4.44** metres, whereas the Zoning By-law requires a minimum parking spot length of 5.2 metres.
- [9] With the concurrence of all parties, the application was amended accordingly.
- [10] Ms. Gatchene highlighted the City's concerns with the application on the basis that the Official Plan and Zoning By-law prioritize soft landscaping over private

approaches and clarified that there are no policies in the Official Plan that specifically contemplate planning exemptions to accommodate accessibility needs.

[11] In response to a question from the Committee, Ms. Trail indicated she would have no objection to the imposition of a condition limiting any approval to the tenure of her family's ownership of the land but noted that the parking space and proposed carport could benefit future residents requiring accessible housing.

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

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED

Application Must Satisfy Statutory Four-Part Test

[13] 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

[14] 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 a cover letter, plans, a letter of support signed by area residents, a streetscape character analysis, tree information report, photo of the posted sign, and a sign posting declaration.
- City Planning Report received July 31, 2024, with concerns.
- Rideau Valley Conservation Authority email received August 2, 2024, with no objections.
- Hydro Ottawa email received August 2, 2024, with comments.
- C. Knight, resident, email received July 28, 2024, in support.

Effect of Submissions on Decision

[15] The Committee considered all written and oral submissions relating to the application in making its decision and granted the application.

- [16] Based on the evidence, the majority of the Committee (Members Blatherwick and Coakeley dissenting in part, for reasons noted below) is satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.
- [17] The Committee notes that the City's Planning Report raises "some concerns" regarding the application, highlighting that, "[t]he proposed front yard parking space will result in a loss of soft landscaping on the site which is the intended priority of Official Plan Policy 5.2.1(5)(b) over the provision of parking." The report also states that the City has "no concerns" with variances (c), (d), and (e).
- [18] The Committee further notes that the application seeks to legalize, after the fact, an already-built parking space that does not comply with zoning regulations. 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. 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. 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.
- [19] The majority of the Committee finds that no compelling evidence was presented that the variances would result in any specific adverse impact on neighbouring properties and note that a number of adjacent neighbours indicated their support for the application. The majority further notes that evidence was presented, and confirmed by the City Forester, that there would be no impact to the future health of the existing mature tree at the front of the building.
- [20] Considering the circumstances, therefore, the majority of the Committee finds that, because the proposal fits well in the area and contributes to the supply of housing to meet the needs of all current and future residents, and specifically persons with disabilities, 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.
- [21] The majority of 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 and broadly contributes to the development of a healthy and inclusive community.
- [22] In addition, the majority of the Committee finds that the requested variances maintain the general intent and purpose of the Zoning By-law because it represents orderly development that is compatible with the surrounding area.

[23] Moreover, the majority of 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.

[24] THE COMMITTEE OF ADJUSTMENT therefore authorizes the requested variances, **subject to** the location and size of the proposed construction being in accordance with the site plan filed and Committee of Adjustment date stamped July 2, 2024, as it relates to the requested variances.

[25] Members Blatherwick and Coakeley dissent, finding that variances (a) and (b) would result in the creation of a significantly undersized front yard parking space which in their opinion does not represent good planning since it could result in vehicular encroachment onto the public sidewalk in front of 18 Elliot Avenue. Members Blatherwick and Coakeley also note that the creation of a front yard parking space in this location constitutes a clear violation of Official Plan policy 5.2.1(5)(b), which prioritizes unbroken curb space and soft landscaping over private approaches.

Ann M. Tremblay
ANN M. TREMBLAY
CHAIR

John Blatherwick
(with noted dissent)
JOHN BLATHERWICK
MEMBER

Simon Coakeley
(with noted dissent)
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 **August 16, 2024**.



Matthew Garnett
Acting 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 **September 5, 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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