

COMMITTEE OF ADJUSTMENT

Minutes

The Committee of Adjustment for the City of Guelph held its Regular Meeting on Tuesday September 24, 2013 at 4:00 p.m. in Meeting Room 112, City Hall, with the following members present:

R. Funnell, Chair
C. Downer
A. Diamond
L. McNair

Regrets: B. Birdsell
D. Kelly
J. Hillen

Staff Present: M. Witmer, Planner
M. Bunnett, Acting Secretary-Treasurer

Declarations of Pecuniary Interest

There were no declarations of pecuniary interest.

Meeting Minutes

Moved by C. Downer and seconded by L. McNair,

“THAT the Minutes from the September 10, 2013 Regular Meeting of the Committee of Adjustment, be approved as printed and circulated.”

Carried

Other Business

The Acting Secretary-Treasurer advised of an amending decision received from Ontario Municipal Board. The amending decision was regarding application A-46/13 for 310 Cole Road. The amendment pertained to paragraph 4 which was deleted in its entirety and replaced with detail on Michael Witmer giving evidence after being summoned by the applicants.

The Acting Secretary-Treasurer advised that the Ontario Municipal Board September 13, 2013 hearing for application A-4/12 at 553 Edinburgh Road South was adjourned.

The Acting Secretary-Treasurer advised of a request for a refund of deferral fees for application A-18/13 at 75 Creighton Avenue. She noted that the application was for a deck setback and was deferred so that the owner could discuss his options regarding drainage with Engineering Services. She advised that the deferral fee was for \$230.

The Committee discussed the original cause for the deferral which was for the applicant to explore their options for complying with the drainage issue. It was also discussed that the owner should have been aware of the subdivision agreement which is registered on title.

Consideration of Refund of the Deferral Fee for Application A-18/13

Moved by C. Downer and seconded A. Diamond,

“THAT no action to be taken in response to the refund request from the applicant for application A-18/13, being a deferred application for 75 Creighton Avenue”.

Carried

Application: **A-110/13**
Owner: **Timothy Wohlgemut and Angela Player**
Agent: **n/a**
Location: **21 Grange Street**
In Attendance: **Timothy Wohlgemut**

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. T. Wohlgemut replied that the sign was posted and the staff comments were received. He explained that they are on the corner of Grange Street and a former Princess Street which is not considered a formal street. He also explained that three houses face and access from Princess Street. He noted that the back of his house is officially considered to be his frontage. He commented that he would like to keep his children safe with a higher fence and he would not feel comfortable with a 0.8 metre low fence. He also commented that the comments from staff were helpful and reasonable. He explained he intends to install a six foot fence to the mid point of the house and then bring the fence down to two feet seven inches. He felt that their privacy will be acceptable this way.

Committee member L. McNair requested confirmation that part of the fence on Grange Street side will be six feet, two inches high and the remaining part will be two feet, seven inches high.

Mr. T. Wohlgenut confirmed that this is correct and that he is following guidance received from staff.

Committee member L. McNair questioned if there is one or two driveways next to the property.

Planner M. Witmer replied that staff is referring to the driveway along the right-of-way.

Committee member L. McNair requested clarification regarding sightline triangle regulations.

Mr. T. Wohlgenut commented that he would prefer to bring the fence as close to the corner as possible.

The Acting Secretary-Treasurer advised that the fence can be two feet and seven inches high in a corner sightline triangle which the applicant is showing as complying with on the submitted sketch.

Committee member C. Downer recommended approval of the application and proposed to add a condition for the applicant to seek clarification regarding the fence regulations with City staff.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by C. Downer and seconded by L. McNair,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 4.20.9 of Zoning By-law (1995)-14864, as amended, for 21 Grange Street, to permit a 1.9 metre (6.2 foot) high fence in the front yard from the midpoint of the main building to the easterly side property line when the By-law requires that a fence in a front yard have a maximum height of 0.8 metres (2.62 feet), be approved,

subject to the following conditions:

1. That the fence shall not exceed 0.8 metres in height from the midpoint of the main building to the easterly side property line;
2. That the fence shall not be located within the sightline triangle for either driveway that is adjacent to this property; and,

3. That the applicant meets with Planning Services staff to clarify regulations regarding the sightline triangle and the proposed conditions.”

Carried

Application: **A-112/13**
Owner: **Eric and Denise Bitton**
Agent: **n/a**
Location: **73 Bagot Street**
In Attendance: **Eric Bitton**

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. E. Bitton replied that the sign was posted and the staff comments were received. He explained that he is applying to allow for the porch to be at 0 metre setback which will require an encroachment agreement for the stairs.

There were no questions from the members of the Committee.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by A. Diamond and seconded by L. McNair,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Table 4.7 Row 1 of Zoning By-law (1995)-14864, as amended, for 73 Bagot Street,

- a) to permit an uncovered porch to project 3.2 metres (10.49) into the required front yard [4.2 metres (13.77 feet)] when the By-law requires that an uncovered porch can project a maximum of 3 metres into the required yard, and
- b) to permit the uncovered porch and associated stairs to be located 0 metres from the front lot line at Bagot Street [the stairs will encroach 0.78 metres (2.56 feet)]

onto City road allowance] when the By-law requires that an uncovered porch shall have a minimum setback of 0.8 metres (2.62 feet) from the front lot line,

be approved,

subject to the following condition:

1. That prior to the issuance of a building permit, the owner applies to the City Solicitor for an encroachment agreement and obtains approval for the encroachment of a portion of the existing wood stairs that encroach onto the Bagot Street road allowance. “

Carried

Application: A-109/13
Owner: Steven Stemmler
Agent: n/a
Location: 77 Harris Street
In Attendance: Steven Stemmler

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. S. Stemmler replied the sign was posted and the staff comments were received. He explained that he is proposing to build a second storey addition on the existing house. He commented that the request is minor in nature because he is not adding to the existing foot print of the dwelling but is going straight up. He noted that he does not have a side yard which is now required in the zoning by-law. He explained that staff has no concerns with the proposal and it is preferable to the neighbourhood in aesthetics and will add to their property values.

There were no questions from the members of the Committee.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by L. McNair and seconded by A. Diamond,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Table 5.1.2 Row 7 and Section 5.1.3.2.10.1.1 of Zoning By-law (1995)-14864, as amended, for 77 Harris Street, to permit a 47 square metre (508 square foot) second storey addition in line with the existing building walls:

- a) be located 0.76 metres (2.5 feet) from the right side lot line when the By-law requires a minimum side yard of 1.5 metres (4.92 feet), and
- b) be located 2.8 metres (9.20 feet) from the left exterior side yard lot line when the By-law requires a minimum exterior side yard to be the average of the adjacent properties or 6 metres (19.68 feet) where the average cannot be determined, in this case, the exterior side yard requirement being 6 metres (19.68 feet),

be approved,

subject to the following condition:

1. That prior to issuance of a building permit, the applicant make arrangements with the Technical Services Department of Guelph Hydro Electric Systems Inc. for the possible relocation of the existing overhead hydro service. This would be at the applicant’s expense.”

Carried

Application: **A-108/13**

Owner: **Brian and Beverley Wagner**

Agent: **n/a**

Location: **51 Vancouver Drive**

In Attendance: **Brian Wagner**

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. B. Wagner replied the sign was posted and the staff comments were received. He was available for questions.

Committee member L. McNair questioned whether the addition will be built straight in line with the existing house.

Planner M. Witmer confirmed that the proposed addition is in line with the existing dwelling.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by C. Downer and seconded by A. Diamond,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 5.1.2.7 i) of Zoning By-law (1995)-14864, as amended, for 51 Vancouver Drive, to permit a 23.4 square metre (252 square foot) one storey addition to the rear of the existing dwelling to be located 5.3 metres (17.50 feet) from the exterior side yard lot line when the By-law requires that the minimum exterior side yard be the average of the setbacks of the properties having lot frontage within the same City Block Face [5.5 metres (18.04 feet)], be approved.”

Carried

Application: A-113/13
Owner: Mirek Sharp
Agent: Adapt-Able Design Group, Carlos Salazar
Location: 127 Mary Street
In Attendance: Mirek Sharp
Carlos Salazar

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. C. Salazar replied the sign was posted and the staff comments were received. He noted that they are proposing to build an extension to an existing garage. He explained that they are requesting a 0.9 metre setback variance to accommodate access for his client.

Committee member L. McNair questioned whether a roof will be built for both the addition proposed on the corner of the garage and the other addition behind the garage.

Mr. C. Salazar replied that is correct. He explained that the addition at the front corner of the garage forms part of the variance.

There were no further questions from the members of the Committee.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by L. McNair and seconded by C. Downer,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Table 5.1.2 Row 7 of Zoning By-law (1995)-14864, as amended, for 127 Mary Street, to permit a 297.9 square metre one storey addition to be located 0.9 metres (3 feet) from the left side lot line when the By-law requires a minimum side yard setback of 1.5 metres (4.92 feet), be approved.”

Carried

Application: A-107/13
Owner: Carolyn Ellerton
Agent: n/a
Location: 262 Farley Drive
In Attendance: Carolyn Ellerton

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. C. Ellerton replied the sign was posted and the staff comments were received. She explained that she purchased the house thinking that the existing apartment complies with regulations. She further explained that two City inspectors have visited the apartment and she realized there is no way to minimize the floor area.

There were no questions from the members of the Committee.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by C. Downer and seconded by L. McNair,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 4.15.1.5 of Zoning By-law (1995)-14864, as amended, for 262 Farley Drive, to permit a two bedroom accessory apartment in the basement of the residential dwelling to have an area of 98.4 square metres (1059.1 square feet) when the By-law requires that an accessory apartment shall not exceed a maximum of 80 square metres (861.1 square feet) in floor area, be approved.”

Carried

Application: A-111/13
Owner: Michael and Laura Vanderveldt
Agent: n/a
Location: 17 Mercer Street
In Attendance: Laura Vanderveldt

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Ms. L. Vanderveldt replied the sign was posted and the staff comments were received. She explained that it was not their intention to use the detached garage for a home occupation or human habitation.

Committee member A. Diamond questioned why the extra height is required.

Ms. L. Vanderveldt replied that they require storage space above the garage and need the height for that.

There were no further questions from the members of the Committee.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by L. McNair and seconded by A. Diamond,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Sections 4.5.1.4 and 4.5.2.1 of Zoning By-law (1995)-14864, as amended, for 17 Mercer Street, to permit a 1 ½ storey detached garage in the rear yard:

- a) To have a total area of 101.64 square metres (1094.04 square feet) when the By-law requires that the total area of all accessory buildings or structures not exceed 70 square metres (753.47 square feet), and
- b) To have a height of 4.73 metres (15.51 feet) when the By-law requires that the height of an accessory structure shall not exceed 3.6 metres (11.81 feet),

be approved,

subject to the following condition:

- 1. That the accessory building not be used for human habitation or a home occupation.”

Carried

Application: B-51/13
Owner: Fabbian Homes
Agent: Acorn Development, Pete Graham
Location: 12 Summerfield Drive
In Attendance: Pete Graham

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. P. Graham replied that the sign was posted and the staff comments were received. He explained that he did not have any other comments to add and was available for questions.

Committee member L. McNair questioned what the details were regarding a zoning by-law amendment which has been applied for.

Mr. P. Graham replied that the property is currently zoned R.1B and will be zoned R.1D.

Committee member L. McNair questioned whether the Committee is premature with considering the application.

Chair R. Funnell commented that a condition is being recommended to have the zoning in place first.

Planner M. Witmer noted that the zone amendment application is going to a November 4, 2013 statutory meeting and he is anticipating having a decision early in the New Year.

There were no further questions from the members of the Committee.

Having had regard to the matters under Section 51(24) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended, and having considered whether a plan of subdivision of the land in accordance with Section 51 of the said Act is necessary for the proper and orderly development of the land,

Moved by L. McNair and seconded by C. Downer,

“THAT in the matter of an application under Section 53(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, consent for severance of Lot 2, Registered Plan 61M-114, Summerfield Drive, a parcel with a frontage of 9.25 metres along Summerfield Drive and a depth of 32.03 metres be approved,

subject to the following conditions:

1. That the owner pays the actual cost of constructing a new water service lateral to the proposed retained lands including the cost of any curb cuts or curb fills required, with the estimated cost of the works as determined necessary by the General Manager/City Engineer being paid, prior to the issuance of a building permit.
2. That the owner pays the actual cost of the installation of an individual private forcemain and grinder pump system for the proposed retained lands and the design and installation of such system is to meet the requirements of the Ontario Building Code, to the satisfaction of the Chief Building Official.

3. That the owner pays the actual cost of the construction of the new driveway entrances including the required curb cuts and/or curb fills, with the estimated cost of the works as determined necessary by the General Manager/City Engineer being paid, prior to the issuance of any building permit.
4. That the owner pays the actual cost of the removal of the existing concrete within the road allowance from the area of the existing driveway entrance, the restoration of the boulevard with topsoil and sod including any required curb fill, with the estimated cost of the works as determined necessary by the General Manager/City Engineer being paid, prior to the issuance of a building permit
5. That a legal off-street parking space be created on the proposed severed lands and the proposed retained lands at a minimum setback of 6-metres from the property line at the street.
6. That the owners of the proposed severed lands and the proposed retained lands (Lot 2, Registered Plan 61M-114) will be responsible for the maintenance and protection of the existing drywell.
7. That the owners grade, develop and maintain the site in accordance with a Site Plan that has been submitted to and approved by the General Manager/City Engineer.
8. That the owner shall make arrangements satisfactory to the Technical Services Department of Guelph Hydro Electric Systems Inc. for the installation of an underground hydro service to the proposed new dwelling on the said lands, prior to the issuance of a building permit.
9. That the owner makes satisfactory arrangements with Union Gas for the servicing of the lands, as well as provisions for any easements and/or rights-of-way for their plants, prior to the issuance of any building permits.
10. The owner shall ensure that all telephone service and cable TV service on the lands shall be underground. The owner shall enter into a servicing agreement with the appropriate service providers for the installation of underground utility services, prior to the issuance of any building permits.
11. That prior to endorsonation of the deeds, the owner shall enter into an agreement with the City, registered on title, satisfactory to the General Manager/City Engineer, agreeing to satisfy the above-noted conditions and to develop the site in accordance with the approved plans.
12. That Zoning By-law Amendment ZC1311 to amend the zoning on the subject lands from R.1B to R.1D be approved and be in full force and effect, prior to endorsonation of the deeds.

13. Prior to the issuance of any building permit for the lands, the owner shall pay to the City, the City's total cost of reproduction and distribution of the Guelph Residents' Environmental Handbook, to all future homeowners or households within the project, with such payment based on a cost of one handbook per residential dwelling unit, as determined by the City.
14. Prior to the issuance of any building permit for the lands, the owner shall pay to the City cash-in-lieu of park land dedication in accordance with By-law (1989)-13410, By-law (1990)-13545 and By-law (2007)-18225, as amended from time to time, or any successor thereof.
15. That a site plan be submitted to, and approved by the General Manager of Planning Services and the City Engineer, prior to the issuance of a building permit for the new dwelling on the severed parcel indicating:
 - a. The location and design of the new dwelling;
 - b. All trees on the subject property, including the extent of their canopies that may be impacted by the development. Any trees within the City boulevard must also be shown, including appropriate protective measures to maintain them throughout the development process. The plan should identify trees to be retained, removed and/or replaced and the location and type of appropriate methods to protect the trees to be retained during all phases of construction.
 - c. The location of the new dwelling with a setback that is in character with the surrounding area;
 - d. Grading, drainage and servicing information;
16. That no vegetation removal shall occur during the breeding bird season (May-July), as per the Migratory Bird Act.
17. That the elevation and design drawings for the new dwelling on the severed parcel be submitted to, and approved by the General Manager of Planning Services, prior to the issuance of a building permit for the new dwelling in order for staff to ensure that the design of the new dwelling respects the character of the surrounding neighbourhood in all aspects including the proposed massing, building setbacks and the size and location of any proposed garage.
18. That prior to the issuance of a building permit for the severed parcel, any required tree protection fencing be erected on-site and inspected by staff to the satisfaction of the General Manager of Planning Services.
19. That the applicant pay to the City, as determined applicable by the City's Director of Finance, development charges and education development charges, in accordance with City of Guelph Development Charges By-law (2009)-18729, as amended from time to time, or any successor thereof, and in accordance with the Education

Development Charges By-laws of the Upper Grand District School Board (Wellington County) and the Wellington Catholic District School Board, as amended from time to time, or any successor by-laws thereof, prior to issuance of a building permit, at the rate in effect at the time of issuance of the building permit;

20. That prior to endorsonation of the deeds, the existing foundation on the subject lands be completely demolished and removed.
21. That prior to issuance of a building permit, the owner make satisfactory arrangements with the Technical Services Department of Guelph Hydro Electric Systems Inc. for the installation of two new underground services to the newly created lots. This would be at the owner's expense.
22. That prior to the endorsonation of the deeds, the owner shall enter into an agreement with the City, registered on title, agreeing to satisfy the above-noted conditions and to develop the site in accordance with the approved plans.
23. That the documents in triplicate with original signatures to finalize and register the transaction be presented to the Secretary-Treasurer of the Committee of Adjustment along with the administration fee required for endorsement, prior to September 27, 2014.
24. That all required fees and charges in respect of the registration of all documents required in respect of this approval and administration fee be paid, prior to the endorsement of the deed.
25. That the Secretary-Treasurer of the Committee of Adjustment be provided with a written undertaking from the applicant's solicitor, prior to endorsement of the deed, that he/she will provide a copy of the registered deed/instrument as registered in the Land Registry Office within two years of issuance of the consent certificate, or prior to the issuance of a building permit (if applicable), whichever occurs first.
26. That a Reference Plan be prepared, deposited and filed with the Secretary-Treasurer which shall indicate the boundaries of the severed parcel, any easements/rights-of-way and building locations. The submission must also include a digital copy of the draft Reference Plan (version ACAD 2010) which can be forwarded by email (cofa@guelph.ca) or supplied on a compact disk."

Carried

Application: **A-75/13**

Owner: **2073977 Ontario Ltd.**

Agent: Astrid J. Clos Planning Consultants, Astrid Clos

Location: 12 Wyndham Street North

In Attendance: Astrid Clos
Chief of Police Bryan Larkin
Bobbi Neal
Dario Direnzo
Charles Nash
Ian Panabaker
Marty Williams
Bobbi Minor
Lloyd Grinham

The Acting Secretary-Treasurer advised the Committee of comments received from Heritage Guelph:

“That Heritage Guelph has no objection to the proposed minor variance application for an increase in occupancy at 12 Wyndham Street North / 58 MacDonell Street, and that Heritage Guelph is supportive of the perspective, elevation and plan drawings provided in the 25 June Committee of Adjustment application but must still review any proposal for awnings, signage and lighting associated with the redevelopment of the property and the owners’ Downtown Façade Improvement Grant Application.”

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Ms. A. Clos replied that the signs were posted and the staff comments were received. She explained that initially two variances have been applied for, one for 58 MacDonell Street and one for 12 Wyndham Street. She advised that they wish to withdraw the application for 58 Macdonell Street.

Ms. A. Clos explained that the restaurant known as “Frank and Steins” has a grandfathered capacity of 228 people which is greater than the zoning by-law currently permits. She explained that the added 40 people on the patio are not part of the minor variance requested. She also explained that the minor variance requested is for adding the capacity from 228 to 290 people which is an increase of 62 people. She commented that the downtown is transitioning with more residential units being built. She noted that restaurants add activity in the downtown core during the day; good examples are Albion and Van Gogh who have managed to improve as restaurants. She explained that seven years ago the issue with downtown crowds was large due to students being younger and not of drinking age. She continued by quoting crime rate statistics provided in the letter submitted by Chief of Police. She commented that the property owners are investing 350,000 dollars to improve the building. She commented that the

proposal is to reinstate the heritage value of the building and a restaurant would add activity during the day. She explained that when the 2004 report went to Council, the zoning by-law was changed to limit the floor area and number of persons to 190. She explained that the intent is not to enlarge the existing floor area. She advised the Committee that the Downtown Business Association board of management has commented that the regulations are too restrictive. She commented that the opportunity to vary a zoning by-law exists and the report did not state that a zone change has to occur. She also commented that they applied in May of 2012 for a façade improvement plan and in November of 2012 an architect prepared for the facade improvements. She noted that after a meeting with staff, the owners left thinking that the minor variance will be supported. She also noted that staff did not mention that there is a need for a zone change. She continued by mentioning that recently two downtown restaurants got approval from Committee of Adjustment to increase their floor area. She noted that these applications did not require a zone change.

Ms. A. Clos noted that the general intent of the Official Plan is being maintained. She explained that the objective was to encourage restoration on heritage buildings. She continued by quoting sections from the Official Plan. She reminded the Committee that Downtown Business Association and Economic Development have provided letters in support of the application. She noted that the intent of the zoning by-law is maintained and the use is permitted. She explained that with a floor area of 131 square metres, 303 people could be accommodated. She also explained that the owners are trying to bring the building to compliance with the zoning by-law regulations by improving the exterior design. She noted that the impact of the application is minor when comparing to a new license establishment being created. She also noted that the old building is using its existing footprint which makes the variance desirable. She commented that the variance request meets all four tests of the Planning Act. She continued by referencing conditions typed as part of her presentation she is recommending to be included if the application is approved.

Committee member L. McNair commented that he is proposing to add a third condition in addition to the two proposed by the applicant. He noted that he is proposing to add a condition which states that the increase in the capacity will not be realized until the first two proposed conditions have been met; being that a restaurant be opened within two years and the façade improvements be made within two years.

Committee member C. Downer questioned if staff can respond to the comment regarding the 2005 report stating that a variance can be requested through the Committee of Adjustment. She also noted that staffs comment stated that a comprehensive review should be conducted.

Planner M. Witmer replied that staff feels that due to the potential cumulative impact the granted variance could have, staff needs to conduct a thorough study through a zoning by-law amendment. He explained that they are only considering this application itself and staff will view all applications on their own merits.

Committee member C. Downer questioned what detailed studies staff would perform.

Planner M. Witmer replied that it would be premature to comment on the details and that staff needs to study to realize how the downtown has progressed.

Committee member C. Downer questioned if this means that the staff must find out if the downtown has the capacity to handle the request.

Planner M. Witmer replied that more statistics are required on how the downtown has progressed so staff can form an opinion.

Committee member L. McNair commented that the restaurant might have one of the largest footprints of the downtown area.

Mr. C. Nash replied that there are at least three other establishments with a footprint that is double or more. He explained that they were grandfathered as well with a capacity of 1,300, 600 and 500.

Committee member L. McNair commented that when dealing with capacity, the zoning by-law should also have the square footage in mind and not just a number of 190.

Planner M. Witmer agreed and commented that this would be part of the comprehensive study.

Mr. C. Nash commented that the capacity number is provided for in the Ontario Building Code regulations. He explained that ten years ago if they had added more bathrooms, that would have given them the capacity for 330 people.

Committee member C. Downer noted that the Committee is considering the increase in the numbers. She noted that the numbers were important at the time when the by-law was changed. She recommended refusal of the application and also recommended to follow the proposal to have City staff complete a comprehensive study. She explained that she is aware of the comments received from Police Services where the situation was thoroughly looked at in 2004, which is the reason why there is a concern. She noted that setting a precedent with increasing the numbers makes her concerned without completing a revised study.

Chair R. Funnell commented that the variance is not minor in nature and perhaps a revised study should be considered.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by C. Downer a seconded by A. Diamond,

“THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 6.3.2.5.3 of Zoning By-law (1995)-14864, as amended, for 12 Wyndham Street North, to permit the total capacity of a licensed establishment (Frank and Steins) on the main floor to increase by 62 persons and by 40 persons in a proposed outdoor patio, up to 330 persons in total, when the By-law permits a total capacity for a licensed establishment of 190 persons, be refused.

The reason for refusal being:

1. The variance is not minor in nature.”

Carried

Committee member L. McNair commented that an increase of 62 persons is not major. He also commented that the owners have agreed that the proposed first two conditions will not be realized until they are completed. He noted that the proposed overall upgrading is important and the application meets the criteria for a minor variance.

Application: A-87/13

Owner: 536357 Ontario Ltd.

Agent: Drew Gillingham

Location: 9 Wyndham Street North

In Attendance: Drew Gillingham
Ian Panabaker
Chief of Police Bryan Larkin
Marty Williams

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. D. Gillingham replied that the sign was posted and the staff comments were received. He explained that in light of the application heard before them recommending a comprehensive study, they would like to withdraw the application.

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There were no questions from the members of the Committee. The application is considered withdrawn as per request from applicant.

Application: **A-88/13**

Owner: **536357 Ontario Ltd.**

Agent: **Drew Gillingham**

Location: **72 MacDonell Street**

In Attendance: **Drew Gillingham**
 Robert Dehu
 Ian Panabaker
 Chief of Police Bryan Larkin
 Marty Williams

Chair R. Funnell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received.

Mr. R. Dehu replied that he would respectfully like to withdraw the application.

There were no questions from the members of the Committee. The application is considered withdrawn as per request from applicant.

The meeting adjourned at 5:36 p.m.

R. Funnell
Chair

Minna Bunnett, ACST(A)
Acting Secretary Treasurer