

COMMITTEE OF ADJUSTMENT

Minutes

The Committee of Adjustment for the City of Guelph held its Regular Meeting on Tuesday November 27, 2012 at 4:00 p.m. in Meeting Room 112, City Hall, with the following members present:

R. Funnell
J. Hillen
J. Andrews
A. Diamond
L. McNair – Chair (until 5:24 p.m.)
D. Kelly, Vice-Chair

Absent: B. Birdsell

Staff Present: M. Witmer, Planner
K. Fairfull, Secretary-Treasurer
M. Bunnnett, Assistant Secretary-Treasurer

Declarations of Pecuniary Interest

There were no declarations of pecuniary interest.

Meeting Minutes

Moved by R. Funnell seconded by D. Kelly,

“THAT the Minutes from the November 13, 2012 Regular Meeting of the Committee of Adjustment, be approved as printed and circulated.”

Carried

Other Business

The Secretary-Treasurer explained the decision was received from the Ontario Municipal Board dismissing the appeal for Application A-79/12 at 103 Lynch Circle. She advised the application was to allow a driveway widening and a larger accessory apartment which were refused by the Committee and appealed by the owner. She noted the Ontario Municipal Board dismissed the appeal and upheld the Committee's decision.

The Secretary-Treasurer explained the decision was received from the Ontario Municipal Board dismissing the appeal for Application A-103/11 at 29 Curzon Crescent. She advised the

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application was for a driveway widening which was refused by the Committee and appealed by the owner. She noted the Ontario Municipal Board dismissed the appeal and upheld the Committee's decision.

Application: A-116/12
Owner: Victoria Weiler
Agent: B & M Construction / SmithValeriotte
Location: 581 Woolwich Street
In Attendance: Victoria Weiler

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

Ms. Weiler replied the notice signs were posted and comments were received from staff. She noted they wish to construct an open exterior stair to access the apartment on the second floor which she will be residing.

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 J. Andrews 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 4.15.2.1 of Zoning By-law (1995)-14864, as amended, for 581 Woolwich Street, to permit an open stairway to be constructed which will lead to the residential unit on the second floor when the By-law requires that for dwelling units with commercial uses, every dwelling unit shall have a separate private entrance, which shall not be an open exterior stairway, be approved."

Carried

Application: A-117/12
Owner: David Gray

Agent: n/a

Location: 5 Orchard Crescent

In Attendance: David Gray

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

Mr. Gray replied the notice sign was posted and comments were received from staff. He explained he would like to widen the driveway at the front of the proposed garage addition to provide access.

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 R. Funnell,

“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 4.13.7.2 (ii) of Zoning By-law (1995)-14864, as amended, for 5 Orchard Crescent, to permit a driveway width of 11.73 metres (38.5 feet) at the garage face to accommodate a garage addition when the By-law requires that only one driveway access shall be created per residential property and such driveway shall have a maximum width of 7.5 metres (24.6 feet), be approved, subject to the following conditions:

1. That the area of the driveway proposed to be widened not be used as an off-street parking space for any vehicle at any time.
2. That the driveway widening be constructed in accordance with the submitted sketch with minor variance application A-117/12.”

Carried

Application: B-55/12

Owner: Michael and Carolyn Belcastro

Agent: JL Cox Planning Consultants Inc.; John Cox

Location: 58 Fleming Road

In Attendance: John Cox
Carolyn and Michael Belcastro
Bill Worton

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

Mr. Cox replied the notice sign was posted and comments were received from staff. He explained they wish to sever a lot with a width of 42 feet. He noted the area is comprised of a mix of older homes and new homes and the proposal would comply with area development. He noted the lot was serviced to the property line when Fleming Road was re-constructed therefore services are available. He advised they will be submitting an application for zoning amendment as the property is located in the Urban Reserve zone. They have reviewed the recommendations from staff and have no concerns.

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 A. Diamond and seconded by J. Andrews,

“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 Part Lot 16, Registered Plan 468, to be known municipally as 56 Fleming Road, a parcel with a frontage of 12.8 metres along Fleming Road and a depth of 51.9 metres, be approved, subject to the following conditions:

1. That the owner 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.
2. That the owner pays the actual cost of the construction of the new driveway entrance including the required curb cut and/or 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.

3. That prior to the issuance of any building permits on the proposed severed lands, the owner shall pay the flat rate charge established by the City per metre of road frontage to be applied to tree planting for the proposed severed lands.
4. That the owner constructs the new dwelling at such an elevation that the lowest level of the building can be serviced with a gravity connection to the sanitary sewer.
5. That the owner shall pay the actual costs associated with the removal of the existing structure/shed and any other materials from the severed parcel, prior to endorsement of the deeds.
6. That the owner enters into a Storm Sewer Agreement with the City, satisfactory to the General Manager/City Engineer, prior to endorsement of the deeds.
7. That a legal off-street parking space be created on the severed parcel at a minimum setback of 6-metres from the property line at the street.
8. Prior to endorsement of the deeds, the owner will be required to ensure that any domestic wells or monitoring wells and boreholes drilled for hydrogeological or geotechnical investigations are properly decommissioned in accordance with current Ministry of the Environment Regulations and Guidelines to the satisfaction of the General Manager/City Engineer.
9. Prior to the issuance of any building permit, the owner shall construct, install and maintain erosion and sediment control facilities, satisfactory to the General Manager/City Engineer, in accordance with a plan that has been submitted to and approved by the General Manager/City Engineer.
10. Prior to the issuance of a building permit, the owner agrees to place a notification in the offer of purchase and sale for the lot that sump pumps will be required unless a gravity outlet for the foundation drain can be provided on the lot. Furthermore, all sump pumps must be discharged to the rear yard.
11. That all electrical services to the lands are underground and the owner shall make satisfactory arrangements with the Engineering Department of Guelph Hydro Electric Systems Inc. for the servicing of the proposed severed lands, prior to the issuance of any building permit.
12. 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.

13. That the applicant apply for and receive approval to amend Zoning By-law (1995)-14864 to change the Zoning category on the severed and retained parcel to a suitable single detached residential Zoning category, prior to endorsonation of the deeds;
14. That any accessory structures and any vehicles parked on the subject property's landscaped open space be removed, prior to endorsonation of the deeds;
15. That a site plan, elevations and design drawings for the new dwelling on the severed parcel 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 and showing:
 - 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 physical location of the new dwelling with a setback that is in character with the surrounding area;
 - d) The design of the new dwelling, to ensure that it 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;
 - e) Grading, drainage and servicing information;
16. 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;
17. That no vegetation removal shall occur during the breeding bird season (May-July), as per the Migratory Bird Act;
18. That the applicant shall pay to the City cash-in-lieu of park land dedication in accordance with By-law (1989)-13410, as amended from time to time, or any successor thereof, prior to the endorsonation of the deeds, at the rate in effect at the time of the endorsonation.

19. That the owner shall pay to the City, the City's total cost of reproduction and distribution of the Guelph Residents' Environmental Handbook, with such payment based on a cost of one handbook per residential dwelling unit, as determined by the City, prior to the issuance of any building permit for the lands.
20. That prior to the endorsation 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.
21. 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 November 30, 2013.
22. 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.
23. 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.
24. 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-118/12**

Owner: **Deborah Michaels**

Agent: **Bruce Starr**

Location: **134 Grange Street**

In Attendance: **Deborah Michaels**

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

Ms. Michaels replied that the sign was posted and the staff comments were received. She explained that the application is for a height variance on a proposed detached garage.

The Committee had no questions for the applicant.

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 R. Funnell and seconded by J. Hillen,

“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 4.5.2.1 of Zoning By-law (1995)-14864, as amended, for 134 Grange Street, to permit a 4.7 metre by 4.37 metre detached garage to have a height of 4.1 metres (13.45 feet) when the By-law requires that in a residential zone, the height of an accessory structure shall not exceed 3.6 metres (11.83 feet), measured at the mid point between the eave and the ridge, be approved subject to the following condition:

1. That all or any portion of the detached garage not be used as habitable space or for a home occupation.”

Carried

Application: A-120/12

Owner: 2109029 Ontario Inc. / Brodie Limited

Agent: 1838075 Ontario Inc.; Robert Dowd

Location: 919 York Road

In Attendance: Robert Dowd
Glenn Currie
Janet Currie
Pat Monteath
Edith Johnson
Ken Johnson

**Jennifer Jacobi
Fred Anderson
Sue Koehlel
Al Koehlel
Doc Caldrrer
Rick Eller
Tony Wegaer
Roy Wakefield
Doug Dolby**

The Assistant-Secretary noted that an email from a representative of the Guelph Legion was received opposing the application.

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

Mr. Dowd replied that the signs were posted and he also received the staff comments. He explained that the variance application is the first step in a several step process for establishing a bingo hall. He commented that he believed a bingo hall was a permitted use on the property previously but has since been assigned a specialized zoning.

Committee member R. Funnell questioned whether the applicant discussed his proposal with the Guelph Legion which is located next door.

Mr. Dowd replied that he did have a meeting with the Legion but did not hear from them after the meeting. He explained that the intention was to meet with them again but he was not able to do so.

Committee member R. Funnell commented that there is opposition to the variance application from the Guelph Legion members whose representatives are present at the Committee of Adjustment meeting. He questioned whether it would be a good idea to have a discussion with the Legion members to inform them on the details of his business proposal and possibly prevent an appeal to the Ontario Municipal Board.

Mr. Dowd replied that he is open to discussion with the members if it will be of assistance.

Committee member R. Funnell questioned whether a bingo hall was previously established on the property.

Planner M. Witmer replied that a bingo hall was an accessory use to the Guelph Legion which was previously located on the property. He noted that the bingo hall was an occasional use, not a designated use.

Committee member D. Kelly questioned whether staff feels a bingo hall would be an appropriate use of the building.

Planner M. Witmer replied that staff feels the proposed use is very similar to the uses which are permitted on the property currently. He continued by explaining that as an example, a banquet hall would often have draws, silent auctions and bingo events. He commented that from a Planning land use perspective, a bingo hall would be acceptable.

Mr. Currie, a lottery administrator for the Colonel John McCrae Legion Memorial Branch 234, explained that the Guelph Legion is opposing the proposed bingo hall. He explained that the building in question was the former location of the Legion. He commented that the Wednesday bingo they currently have will be greatly affected and without the revenue generated by the bingo they will find it very difficult to run the building and might have to close their doors in the future. He proceeded by giving a summary of all the organizations that the Guelph Legion supports. He commented that not continuing the bingo events might cause them not being able to provide all the services to the community they currently offer.

A concerned citizen commented that the Legion has recently moved into a new building and if the variance is approved, it will hurt their operations.

Chair L. McNair commented that the bingo hall would need to be licensed and it would have to follow the license regulations.

Planner M. Witmer noted that the zoning must be in place for the provincial licensing.

Mr. Eller, a representative for Crime Stoppers, commented that they have been a recipient for donations from branch 234 of the Legion and are relying on them as well as other boards. He noted that giving back to the local community is very important.

Mr. Wagner, a representative for Guelph area of Stroke Recovery Canada, commented that the Legion is supportive of their cause and Stroke Recovery Canada is supporting the continuance of the Legions operations.

Mr. Dowd commented that it is not their intention to drive the Legion out of business. He further commented that the Legion could operate their bingo from the proposed new bingo hall and still generate income. He commented that in his other business branches they have been co-operating with the local legions and it is working out well. He further commented that this was the intention with the Guelph Legion as well. He explained that the purpose of his organization is to be a licensed operator of the facility, where different groups can run their bingo events from.

Committee member J. Andrews commented that the Committee cannot make a decision based on competition but on planning grounds.

Committee member D. Kelly commented that it is unfortunate that the two groups were not able to get together to have a conversation about the proposal.

Mr. Dowd replied that the purpose is to work together with different charity groups in the entire community. He noted that his business is in the private sector and they do make a profit with their bingo halls.

Committee member A. Diamond commented that it might be beneficial to show the Legion a cost-benefit analysis. She noted that the two groups should meet.

Mr. Dowd commented that he did not hear back from the Legion members and he did not have a chance to follow-up with them. He explained that in 2007 the Alcohol and Gaming Commission introduced a process where the revenues must be shared between the operator and the charities, including any profit made with food being sold at the premises.

Committee member R. Funnell questioned whether the Legion representatives would be prepared to meet with the applicant to discuss the matter further.

Mr. Currie replied that he would have to discuss this with their executive. He confirmed that earlier in the year the Legion was approached by the applicant. He pointed out that the Legion is not a registered charity but a non-profit organization. He commented that they are tied into certain formulas and when the bingo numbers drop, they will not get the same number of people coming out.

Committee member J. Andrews commented that unfortunately the Legion cannot control where a new bingo hall might be created; could be even in the township which is very close to Guelph.

Mr. Currie confirmed that this is correct but this bingo hall would be located right next to their building which will affect them regardless of the day the bingo is run or how often.

Chair L. McNair questioned the applicant whether the Legion being a non-profit organization, not a registered charity, is able to operate bingo from his premises.

Mr. Dowd replied that a non-profit organization is able to do this, along with different service groups, schools, youth groups etc.

Chair L. McNair questioned what the maximum seating capacity would be for the proposed bingo hall.

Mr. Dowd replied that the bingo hall area is 10,000 square feet which would seat approximately 400 people, which is quite a large number.

Ms. Currie expressed a concern regarding the operations of the proposed bingo hall. She also commented that without the Legion, there would be no more giving back to the community.

A general discussion took place between the Committee members regarding deferring the application.

Moved by J. Andrews and seconded by D. Kelly,

“THAT Application A-120/12 for Brodie Limited at 919 York Road, be deferred up to 4 months, to facilitate a discussion between the applicant and the Legion members and that the deferral application fee be paid prior to reconsideration of the application.”

Carried

Application: **A-119/12**
Owner: **Lynn Schmakies**
Agent: **Pat Gervais**
Location: **402 Starwood Drive**
In Attendance: **Lynn Schmakies**
 Pat Gervais

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

Mr. Gervais replied that the sign was posted and they did receive the staff comments. He explained that he has built a patio door across the garage opening. He further explained that they use the area for smoking during the winter and the door was created to keep the area warm. He commented that now he is aware that he broke a parking rule but that they have never had a need for the garage for extra parking; the area is used for storing items. He noted that if the door must be removed, it can be easily done.

Ms. Schmakies explained that she did not apply for a building permit for the door because it could easily be removed and the installation did not require any structural changes to the dwelling.

Committee member J. Andrews asked staff whether the issue is with the glass doors versus a garage door.

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Planner M. Witmer replied that by removing the garage door, the garage is physically blocked off and a vehicle cannot access the garage.

Ms. Schmadies commented that you could only fit a smart car in the garage due to its small size.

Mr. Gervais commented that he has a small heater to keep the area warm.

Committee member R. Funnell questioned whether a vehicle fits in the garage.

Mr. Gervais replied that you could fit a small car in the garage but that he is not able to fit his truck in there. He explained that the garage door is currently there in an open position and if he removes the patio door, he is able to close the garage door and fit a vehicle inside.

Committee member D. Kelly questioned if the intent of the By-law is to park in the garage and not in the driveway?

Planner M. Witmer replied that the primary location for the legal off-street parking space is behind the front wall of the dwelling which automatically places it in the garage.

Committee member A. Diamond had a concern that the area looks like a regular interior room and will never be used as a garage.

Chair L. McNair left the meeting at 5.24 p.m.

Ms. Schmadies commented that she could not afford to connect the heating to the area and would not want to be living in the room.

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 R. Funnell and seconded by J. Hillen,

“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 5.1.3.3.5.2.3 of Zoning By-law (1995)-14864, as amended, for 402 Starwood Drive, to permit the legal off-street parking space (with a depth of 5.5 metres) to be located in the driveway 3.9 metres in from the street line when the By-law requires that the legal off-street parking space be located to the rear of the setback line and a minimum distance of 6 metres from the street line, be refused.

Reason for refusal being:

1. The intent of the By-law is not maintained by turning the off-street legal parking space into living space.”

Carried

The meeting adjourned at 5:27 p.m.

L. McNair
Chair

Kim Fairfull, ACST
Secretary-Treasurer

Minna Bunnett, ACST(A)
Assistant Secretary-Treasurer