

COMMITTEE OF ADJUSTMENT

Minutes

The Committee of Adjustment for the City of Guelph held its Regular Meeting on Tuesday August 13, 2013 at 4:00 p.m. in Meeting Room 112, City Hall, with the following members present:

R. Funnell – Vice-Chair
J. Hillen
B. Birdsell
A. Diamond
L. McNair
D. Kelly, Chair

Regrets: C. Downer

Staff Present: M. Witmer, Planner
S. Laughlin, Planner
K. Fairfull, Secretary-Treasurer
M. Bunnett, Assistant Secretary-Treasurer

Declarations of Pecuniary Interest

There were no declarations of pecuniary interest.

Meeting Minutes

Moved by B. Birdsell and seconded by A. Diamond,

“THAT the Minutes from the July 27, 2013 Regular Meeting of the Committee of Adjustment, be approved as printed and circulated.”

Carried

Other Business

The Secretary-Treasurer advised that an Ontario Municipal Board hearing has been scheduled for application A-35/12 for 7 Crawford Street. The appeal will be heard on Friday, October 11, 2013 at meeting room 112 at City Hall. The application was for the height of an accessory structure which was refused by the Committee.

The Secretary-Treasurer noted that she has circulated an internal memo to the Committee members regarding an update on the audit done by Legal Services.

Application: B-47/13
Owner: Reid's Heritage Homes
Agent: n/a
Location: 64 Frederick Drive
In Attendance: Alfred Artinger
Laura Vanderveldt

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

Ms. L. Vandervelt replied the sign was posted and the staff comments were received. She explained that they agree with most of the comments except for Engineering Services comment number one. She further explained that the servient tenement should be the holder of the private roadway which is Westminster Woods Holding Corporation.

There were no questions from the members of the Committee. It was agreed to amend Engineering Services condition number one to state: "That prior to endorsement of the deeds, the servient tenement, Westminster Woods Holding Corporation, grants an easement..."

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 R. Funnell and seconded by L. McNair,

"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 a right-of-way over Block 90, Part of Blocks 86 and 88, Registered Plan 61M-160, more particularly described as parts 2, 4, 10 and 19 on Reference Plan 61R-11462, a right-of-way for vehicular and pedestrian ingress and egress through a private condominium property along Lynnmore Street, Waterford Drive and Katemore Drive, in favour of a commercial property municipally known as 64 Frederick Drive, be approved, subject to the following conditions:

1. That prior to endorsement of the deeds, the servient tenement, Westminster Woods Holding Corporation, grants an easement irregular in shape, being Parts 2, 4, 10 & 19 - Registered Plan 61R-11446, in favour of the dominant tenement (future commercial plaza), for provision of vehicular and pedestrian ingress and egress.

2. That prior to endorsement of the deeds, the owner of 64 Frederick Street, shall have an Ontario Land Surveyor prepare a reference plan identifying the easement.
3. 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 August 16, 2014.
4. 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.
5. 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.
6. 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: B-45/13 and A-99/13

Owner: University of Guelph

Agent: Reid's Heritage Homes

Location: 32 Bayberry Drive / 221 Stone Road East

In Attendance: Alfred Artinger
Laura VanderVeldt

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

Mr. A. Artinger replied the sign was posted and the staff comments were received. He explained that Reid's Heritage Homes has a head lease with the University of Guelph until July

1, 2052. He further explained the nature of the applications. He commented that the Village by the Arboretum has adequate parking but the lands specific to the break out lease does not have sufficient parking. He explained that they will enter into a licensing agreement to accommodate the parking. He referred to a comment received from a member of the public explaining that the roadway is a City issue and beyond their control.

There were no questions from the members of the Committee.

Application B-45/13

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 A. Diamond,

“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 release of an existing lease and to permit a new lease until July 1, 2052, for Part Lot 1, Concession 8, designated as Parts 2, 3 and 4 on Reference Plan 61R-11638, known municipally as 32 Bayberry Drive, a building for an assisted living facility retirement home, together with an easement for ingress and egress for pedestrians and motor vehicles to and from Stone Road and an easement for utilities, surface water drainage, construction and services over 221 Stone Road East, be approved, subject to the following conditions:

1. 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 August 16, 2014.
2. 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.
3. 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.
4. 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-99/13

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 Section 5.5.2.2.3.4.1 of Zoning By-law (1995)-14864, as amended, for 32 Bayberry Drive, to permit 88 off-street parking spaces on site and 30 off-street parking spaces on the adjacent property at 221 Stone Road West when the By-law requires a total of 118 off-street parking spaces to be provided on the site, be approved, subject to the following condition:

1. That the conditions imposed for Application B-45/13 be and form part of this approval.”

Carried

Mr. A. Artinger noted that he has asked for a refund of the deferral fee in writing.

Planner S. Laughlin objected to the request and commented that the original application was inaccurate which resulted in a deferral.

A brief discussion took place between the Committee members regarding the deferral fees and the cost of processing the applications.

Consideration of Refund of the Deferral Fee for Application B-45/13

Moved by L. McNair and seconded by R. Funnell,

“THAT the Secretary refund ½ of the deferral fee (\$115.00) for Application B-45/13 at 32 Bayberry Drive.”

Carried

Application: A-95/13
Owner: Glen Miller
Agent: n/a
Location: 8 Industrial Street
In Attendance: Glen Miller

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

Mr. G. Miller replied yes and yes. He was available for any questions.

There were no questions from the members of the Committee.

Having considered a change or extension in a use of property which is lawfully non-conforming under the By-law as to whether or not this application has met the requirements of Section 45(2) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by B. Birdsell and seconded by A. Diamond,

“THAT in the matter of an application under Section 45(2)(a)(i) of the Planning Act, R.S.O. 1990, c.P13, as amended, permission to extend the legal non-conforming use for 8 Industrial Street, with a second storey residential addition in line with the existing residential dwelling building walls, 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 overhead hydro service. This would be at the applicant’s expense.”

Carried

Application: A-100/13
Owner: Keiran Graf and Peter Barkman
Agent: n/a

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Location: 143 London Road West

In Attendance: Keiran Graf
Thomas Gibson

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

Mr. K. Graf replied that he did receive the staff comments but he did not post the sign. He explained that he was supposed to pick up the sign when it was ready which he did not do. He commented that it was not clear that he had to post the sign two weeks ahead of the meeting.

Chair D. Kelly explained that the mandatory posting of the sign is regulated in the Planning Act.

Mr. T. Gibson, resident of 2 Kathleen Street, commented that the owner explained to the neighbours what he was planning on doing.

Planner M. Witmer commented that under the Planning Act there are two ways of giving notice. He explained that a notice must be sent to the neighbours. He further explained that in addition to mailing the notice, the City can decide whether a notice is placed in a newspaper or if a sign will be posted on the property. He explained that the City's standard practise is to have the owner post a sign on the property.

Chair D. Kelly noted that the Committee members may have to defer the application to allow for the proper posting of the sign.

Mr. K. Graf replied that he understands the next meeting is not until September and he is under pressure to complete the renovations. He questioned whether it would be appropriate to go door to door to get signatures from his neighbours.

Planner M. Witmer advised that he feels confident the Committee does have the option to consider the application if they feel that sufficient notice has been given.

Mr. K. Graf explained that he has already spoken with the owners of several houses on London Road and Kathleen Street regarding his application.

Committee member L. McNair commented that given the nature of the application itself, he does not see a problem with considering the application.

A brief discussion took place regarding requirements of giving proper notice.

The property owner had no other comments to add regarding his application.

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 of Zoning By-law (1995)-14864, as amended, for 143 London Road West, to permit a dormer addition to the rear of the residential dwelling to be located 0.86 metres from the right side lot line when the By-law requires that a minimum side yard of 1.5 metres be provided, be approved.”

Carried

Committee member J. Hillen advised the owner that he must post the sign after this meeting and have it posted until the appeal period expires.

Mr. K. Graf agreed to post the sign.

Application: A-96/13
Owner: Rodney Kubis
Agent: n/a
Location: 21 Stevenson Street North
In Attendance: Rodney Kubis

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

Mr. R. Kubis replied the sign was posted and the staff comments were received. He explained that his hobby is storing old sports cars. He noted that currently he has two tent garages and the noise emanates from these tents. He commented that he was aware that the proposed design did not comply with the regulations. He noted that he wanted to avoid attaching it to the house to eliminate costs. He explained that he is willing to make changes to the design to alleviate concerns but the garage needs to be larger than 70 square metres to accommodate his hobby.

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Committee member A. Diamond commented that if the main dwelling on the property was larger, the proposal to build a large, three car detached garage would be acceptable.

Committee member L. McNair questioned whether the second storey is the biggest concern.

Planner M. Witmer replied that the second storey makes it appear excessive and raises concerns for possible human habitation and a home business which are not permitted. He added that it being connected to plumbing makes it easier to convert to an accessory unit.

Committee member L. McNair questioned whether the applicant could resolve the issues through consultation with staff.

Mr. R. Kubis replied that he could attach it to the house and it would not be an issue.

Committee member J. Hillen noted that the height is of concern and is not minor in nature. He advised that the side yard setbacks regulations will change if the garage is attached to the existing dwelling.

Planner M. Witmer explained that an accessory structure could become a coach house but that would involve a zone amendment and would not be dealt through a minor variance application.

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. Hillen 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 Sections 4.5.1.4 and 4.5.2.1 of Zoning By-law (1995)-14864, as amended, for 21 Stevenson Street North,

- a) to permit an accessory structure in the rear yard to have an area of 90 square metres when the By-law permits a maximum area of 70 square metres, and
- b) to permit the accessory structure to have a height of 6.4 metres when the By-law permits a maximum height of 3.6 metres (measured at the mid-point between the eave and the ridge),

be refused.

Reason for refusal being:

1. Height of the building is 45% more than permitted in the by-law, the increase is not minor in nature.”

Carried

Application: B-46/13, A-97/13, A-98/13

Owner: Estate of Margaret Emslie

Agent: JL Cox Planning Consultants Inc.

Location: 28 Jackson Street

In Attendance: John Cox
Karen Prentice
Bill Woodward
Joe McKenna
Debbie Newcombe
Anne Kennedy
Barb Howes
Lindsey Ferguson
Tony Trollope
Roger McInnis
Kathy Bolton
Danny Bolton
Liz Ferguson
Meg Penstone
Dwight Syms
Melanie Berard
Derek Berard

The Assistant-Secretary Treasurer advised that an email was submitted after the comment deadline from a resident at Parkholm Avenue. The email was summarized briefly.

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

Mr. J. Cox replied the sign was posted and the comments were received. He explained that he is purchasing the property from the family estate for his own purposes. He noted that he would like to build a bungalow or bungalow on the severed lot. He commented that he is a former resident of the area and he appreciates the residents' perspectives. He summarized the variances requested. He explained that what used to be the front yard of the retained parcel

becomes the exterior side yard. He also explained that the existing house has had the same setback for 60 years. He quoted the Official Plan residential infill requirements and noted that he meets these requirements. He noted that he will need to replace one large tree but is hoping to retain significant vegetation. He commented that he is proposing a single car garage which would only occupy 1/3 of the house. He also commented that any concerns with drainage will be addressed once a drainage plan is submitted. He noted that he met with three of the neighbours who are mostly affected with the proposal.

Committee member J. Hillen questioned if there is a maximum building height limitation since Planning Services is recommending 1.5 to 2 stories.

Planner Ms. S. Laughlin replied the maximum building height is three stories. She explained that Planning Services will review and approve the drawings submitted for a building permit. She continued by explaining that if the proposal was for a three story high dwelling, Planning Services would state that this would not be in keeping with the character of the neighbourhood as required per provincial policies.

Ms. K. Prentice of 29 Jackson Street handed out petitions to the Committee members and noted that she is speaking on behalf of the neighbourhood. She explained that the proposed lot frontage does not conform to the minimum requirements. She commented that she believes the frontages along Jackson Street are averaging at 19.12 metres which is more than the proposed 12 metres. She also quoted the measurement of total side yards combined being 8.97 metres and the proposed 2.4 metres does not meet the section of the by-law. She was requesting the Committee members to decline the severance and variance requests.

Committee member B. Birdsell questioned whether this is the correct interpretation of the calculation of the frontage.

Planner S. Laughlin explained that the number for the frontage is calculated from the average block face on Jackson Street side which only has two properties with no lot frontages. She further explained that the By-law defaults the frontage requirement to 15 metres. She noted that if the average of the block face is greater than 15 metres, it would also default back to the minimum 15 metres.

Ms. K. Prentice commented that they believe that the variances requested are not minor. She noted that the overall lot reduction to 300 m² is a 30% reduction which could be considered a major variance.

Mr. T. Trollope of 39 Jackson Street questioned whether a variance can be requested later on to allow for a three storey building.

Planner S. Laughlin replied that Planning Services are requesting for condition to allow only 1.5 to 2 stories and this condition will be included in an agreement which will be registered on title.

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She explained that if the application is appealed to the Ontario Municipal Board, this condition could be brought up.

Chair D. Kelly explained the appeal process to the public in the audience.

Ms. A. Kennedy, a resident of Parkholm Avenue, noted that the procedure must be followed and the public notice did not have a time on it. She noted that a revised notice did not follow in the mail indicating what time the application is being heard.

Chair D. Kelly questioned staff of the requirements of a proper public notice.

Planner M. Witmer replied that the time was not indicated on the public notice which is one form of mandatory notice.

Ms. K. Prentice commented that they would prefer if they could have this resolved today.

Mr. R. McInnis stated that several people are currently away on vacation and have not had a chance to respond.

Mr. D. Syms of 31 Parkholm Avenue stated that if the time has to be on the notice, that rule cannot be overturned.

Planner S. Laughlin noted that she believes the time has to be indicated on the notice.

A brief discussion took place regarding deferring the application.

Moved by J. Hillen and seconded by L. McNair,

“THAT Applications B-46/13, A-97/13 and A-98/13 for Estate of Margaret Emslie at 28 Jackson Street, be deferred until the September 10, 2013 Committee of Adjustment regular meeting, to allow for a notice to be mailed out with date and time as required by the Planning Act.”

Carried

Consideration of Deferral Fee for Applications B-46/13, A-97/13 and A-98/13

Moved by B. Birdsell and seconded by L. McNair,

“THAT the applicant not be responsible for payment of the deferral fees for Applications B-46/13, A-97/13 and A-98/13 at 28 Jackson Street.”

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The meeting adjourned at 5:20 p.m.

D. Kelly
Chair

Minna Bunnett, ACST(A)
Assistant Secretary-Treasurer