

COMMITTEE OF ADJUSTMENT

Minutes

The Committee of Adjustment for the City of Guelph held its Regular Meeting on Thursday March 13, 2014 at 4:00 p.m. in Council Chambers, City Hall, with the following members present:

D. Kelly, Chair
R. Funnell
L. McNair

Regrets: K. Ash
B. Birdsell
C. Downer
J. Hillen, Vice-Chair

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

Declarations of Pecuniary Interest

Committee member L. McNair declared a pecuniary interest with application A-21/14 for 16 Wood Duck Court, for the applicant is a client.

Meeting Minutes

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

“THAT the Minutes from the February 13, 2014 Regular Meeting of the Committee of Adjustment, be approved as printed and circulated.”

Carried

Other Business

The Acting Secretary-Treasurer advised that the appeal hearing for 8 Terrace Lane, application A-114/13 has been scheduled for Tuesday, July 8, 2014 at 10:30 a.m. The hearing will be held in Court Room 3 at the Provincial Offences Court.

The Acting Secretary-Treasurer advised that Committee that Mr. John Farley is present to request a refund of application fees for 5 Gordon Street, applications B-29/13, A-64/13 and A-81/13.

Re-consideration of Refund of the Application fees for 5 Gordon Street B-29/13, A-64/13 and A-81/13

Mr. Farley explained that he is formally withdrawing the applications and is present to request the refund of the application fees. He explained that he was not present at the June 25th hearing. He also explained that in preparation for an application, it is standard protocol to proceed with pre-consultation with staff, prior to paying the application fees. He noted that pre-consultation was not done because staff had a busy schedule, legal staff was unavailable and the applications went forward with the belief they will be supported by staff. He explained that staff indicated that the applications were not supported due to technical reasons and that the applications were not in the best interest of the public. He commented that he would have not have moved forward with the applications if the pre-consultation would have indicated this. He noted that an error was made on staff's protocol and the refunding of the fees has been supported by the Manager of Development Planning.

Committee member L. McNair requested clarification whether formal pre-consultation was requested for and completed.

Mr. J. Farley replied that the Secretary-Treasurer indicated pre-consultation was not available and that legal staff was unavailable to assist. He confirmed that formal pre-consultation with Planning Services was not completed but a discussion took place with the Secretary-Treasurer.

Committee member L. McNair questioned how many days in advance the application was submitted.

Mr. J. Farley replied that the applications were submitted two weeks before the deadline.

Committee member L. McNair commented that two weeks is not enough time to receive enough information.

Mr. J. Farley replied that he has in the past submitted other applications two weeks in advance. He noted that with these applications, an error occurred in staff's protocol and process.

Chair D. Kelly questioned if the applicant emailed the Manager of Development Planning requesting for pre-consultation after submitting the applications.

Mr. J. Farley replied that the pre-consultation was with the Secretary-Treasurer only.

Planner M. Witmer noted that he was not aware of any formal pre-consultation prior to the applications being submitted. He explained that staff recommended deferral after the application was submitted due to the applications being complex.

Mr. J. Farley confirmed that he did have conversations with the Manager of Development Planning in whole.

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Chair D. Kelly noted that it is unclear when pre-consultation was formally requested by the applicant. She noted that she understood the Manager of Development Planning was not contacted until after the applications were submitted.

Mr. J. Farley replied he did not contact the Manager of Development Planning after the applications were submitted.

Committee member L. McNair questioned the total amount for the fees paid.

Chair D. Kelly replied that the fees paid were \$2,661 in total. She questioned what amount would cover the staff costs for these applications.

The Acting Secretary-Treasurer replied that 50% should cover the costs for staff time spent.

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

“THAT the Secretary-Treasurer refund 50% (\$1,330.50) of the consent and minor variance application fees for applications B-29/13, A-64/13 and A-81/13 at 5 Gordon Street.”

Carried

Application: B-5/14 and A-15/14
Owner: Bradford and Diane Miron
Agent: n/a
Location: 35 Skov Crescent
In Attendance: Brad Miron

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

Mr. B. Miron replied that the signs were posted and the staff comments were received. He was available for any questions.

Chair D. Kelly questioned whether the applicant noticed there are conditions and understands them.

Mr. B. Miron replied that he does understand the conditions.

There were no questions from the members of the Committee.

Application B-5/14

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 R. Funnell,

“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 Lots 25 and 31, Registered Plan 439, to be municipally known as 8 Cote Drive, a parcel with a lot frontage along Cote Drive of 17.6 metres and a depth of 26.3 metres along the westerly lot line,

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 constructing new service laterals to the severed 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.
3. 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.
4. 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.
5. 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.
6. That the owner enters into a Storm Sewer Agreement with the City, satisfactory to the General Manager/City Engineer, prior to endorsation 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. That the owner shall make satisfactory arrangements with the Engineering Department of Guelph Hydro Electric Systems Inc. for the servicing of the vacant lands, prior to the issuance of any building permit.
 9. 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.
 10. 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.
 11. 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;
 12. That no vegetation removal shall occur during the breeding bird season (May-July), as per the Migratory Bird Act.

13. 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.
14. 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.
15. That prior to endorsement 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.
16. 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 March 19, 2015.
17. 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.
18. 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.
19. 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-15/14

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 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 Table 5.1.2 Row 6 of Zoning By-law (1995)-14864, as amended, for a property to be known municipally as 8 Cote Drive, to permit a front yard setback of 4.6 metres when the By-law requires a minimum front yard of 6 metres, be approved,

subject to the following condition:

1. That the conditions imposed for Application B-5/14 be and form part of this approval.”

Carried

Application: A-20/14
Owner: 1794280 Ontario Ltd.
Agent: AECOM Canada Ltd., Jim Flanigan
Location: 871 Southgate Drive
In Attendance: Jim Flanigan

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. Flanigan replied the sign was posted and the staff comments were received. He explained that a legal survey has now been completed of the property and the actual size of the property is 38,408 square metres.

Chair D. Kelly commented that the change is quite minor and a revised notice should not be necessary.

Planner M. Witmer noted that staff can agree with this, the property is very large. He noted that TDL Group expressed a concern with the proposed PCP waste storage facility. He advised that Hydro One responded to these concerns and that TDL Group no longer has concerns.

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Committee member L. McNair questioned whether this facility is solely for storage or also for manufacturing.

Mr. J. Flanigan replied that the facility is for storage.

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 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 Sections 7.3.5.1 and 4.5.2.2 of Zoning By-law (1995)-14864, as amended, for property to be known municipally as 520 Clair Road West,

- a) to permit a 1,866 square metre industrial building to cover 6.84% of the lot area when the By-law requires that, for lots between 3-10 acres in size, a minimum building size of 15% of the lot area is provided,
- b) to permit a height of 6.22 metres for a general storage building when the By-law permits a maximum height of 4.5 metres for accessory buildings or structures, and,
- c) to permit a height of 5.97 metres for a PCB waste management building when the by-law permits a maximum height of 4.5 metres for accessory buildings or structures,

be approved.”

Carried

Application: A-14/14

Owner: 1626711 Ontario Inc.

Agent: Black, Shoemaker, Robinson & Donaldson Ltd., Nancy Shoemaker

Location: 1123 York Road

In Attendance: Nancy Shoemaker
Paul Barzotti

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

Ms. N. Shoemaker replied that the sign was posted and the staff comments were received. She explained that an office use or an industrial mall is not permitted on this property. She noted that the main concern staff had was that the office might end up being the main use. She explained that staff has put a limit on the size of the office and they agree with that.

Chair D. Kelly questioned whether the applicant understands and agrees with the proposed conditions.

Ms. N. Shoemaker replied that they do.

Committee member L. McNair questioned if the intent is to rent the office as a separate entity or will it be part of a manufacturing business.

Ms. N. Shoemaker replied that they are looking for a variety of uses for possibly two or more units which would be considered as a separate entity for a different manufacturing use.

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 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 7.1.1 and 7.1.1.1 of Zoning By-law (1995)-14864, as amended, for 1123 York Road,

- a) to permit an industrial mall building when the By-law permits a variety of uses but does not permit an industrial mall (two or more units), and
- b) to permit an office use when the By-law does not permit an office use within a B.1 zone,

be approved,

subject to the following conditions:

1. That prior to issuance of a building permit, the applicant makes arrangement with the Technical Services Department of Guelph Hydro Electric Systems Inc. for servicing of the new lot via underground. The servicing costs would be at the owner/applicant's expense.

2. That all office uses occupy a maximum of 30% of the total gross floor area of the whole building.”

Carried

Application: **A-16/14**

Owner: **Carol Bennett and Michael Hietkamp**

Agent: **n/a**

Location: **15 James Street West**

In Attendance: **Carol Bennett**
 Michael Hietkamp

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

Ms. C. Bennett replied that they posted the sign and the staff comments were received. She explained that they were surprised about the engineering comments since the front porch has been there since 1968.

Chair D. Kelly replied that in cases like this, it is a standard procedure for Legal Services to request an encroachment agreement.

Planner M. Witmer noted that an encroachment agreement ensures that the City of Guelph is released of any liability when it comes to the steps.

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 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 5.1.2.7 and Table 5.1.2 Row 7 of Zoning By-law (1995)-14864, as amended, for 15 James Street West,

- a) to permit a dormer addition on the second floor of the existing dwelling to be located 3.19 metres from the front yard property line when the By-law requires that the minimum front yard be the average of the setbacks of the properties having lot frontage within the same City Block Face (5.2 metres), and
- b) to permit a dormer addition on the second floor of the existing dwelling to be located 1.21 metres from the left side yard property line when the By-law requires that a minimum side yard of 1.5 metres is provided,

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 concrete porch steps complete with wrought iron railings and posts that encroach on the James Street road allowance.”

Carried

Application: A-17/14

Owner: Mark Kaminski and Justine Angus

Agent: n/a

Location: 18 Robinson Avenue

In Attendance: Mark Kaminski

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

Mr. M. Kaminski replied that the sign was posted and the staff comments were received. He was available for any questions.

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 R. Funnell 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 5.1.2 Row 7 of Zoning By-law (1995)-14864, as amended, for 18 Robinson Avenue, to permit a 6.1 metre by 8.5 metre two storey addition to the rear of the dwelling to be located 0.40 metres from the right side yard lot line when the By-law requires that a minimum side yard of 1.5 metres is provided, be approved.”

Carried

Application: A-13/14
Owner: Orlando and Mimi Giacotta
Agent: n/a
Location: 56 Windsor Street
In Attendance: Mimi Giacotta

The Acting Secretary-Treasurer advised that an email in support of the application has been received from the owners of 52 Windsor Street.

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

Ms. M. Giacotta replied that the sign was posted and the staff comments were received. She was available for questions.

Chair D. Kelly questioned whether the applicant has seen and agrees with the proposed conditions.

Ms. M. Giacotta replied that she does.

Committee member R. Funnell questioned whether there is any intention of using the building as a garage.

Ms. M. Giacotta replied absolutely not.

Chair D. Kelly questioned what the intent for the structure is.

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Ms. M. Giancotta replied that it will be used for storage only. She explained that they have a single car garage already and the structure will be used for storing items, not vehicles.

Chair D. Kelly pointed out that Planning Services condition number one states that it cannot be used for human habitation or home occupation.

Committee member L. McNair expressed a concern with the garage doors and that the person who owns the property next may choose to use it for parking of vehicles. He noted that there is enough room in the side yard to drive to the rear yard. He questioned whether the applicant would be willing to change the design of the structure which would have narrower doors.

Ms. M. Giancotta replied that she would not want to change the design. She explained that she prefers it to look nice as per the sketch submitted. She also explained that they are gardeners and they have heavy tools and garden tables.

Chair D. Kelly questioned whether staff had any concerns with the two large garage doors.

Planner R. Mallory replied that the Permit and Zoning Administrator noted that the side yard setback is less than the required width of 3 metres for a laneway. He explained that a condition was therefore added that the structure would not be used for storage or parking of vehicles.

Committee member L. McNair proposed to add a limit of 20 years for the variance.

Chair D. Kelly noted that this would perhaps be unnecessary due to the condition which would not permit the parking or storing of vehicles.

Committee member L. McNair proposed to limit the variance to the current ownership only or to add it on title of the property.

The Acting Secretary-Treasurer advised the Committee that Legal Services has advised that a variance cannot be limited to the ownership of the property.

Chair D. Kelly questioned staff if it is necessary to add this condition on title.

Planner M. Witmer replied that adding an agreement on title would be redundant. He advised that the conditional approval satisfies staff and staff would be aware of the conditions imposed due to digital and hard copies of the decision being available.

Committee member L. McNair questioned if public can see the conditions online on the City's website.

Planner M. Witmer replied that he is not certain of this. He noted that property owners can contact staff to view the property files at any time.

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 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 4.5.2.1 of Zoning By-law (1995)-14864, as amended, for 56 Windsor Street, to permit a 8.5 metre by 7.3 metre accessory structure to have a height of 4.6 metres when the By-law requires that accessory buildings and structures shall not exceed 3.6 metres in height, be approved,

subject to the following conditions:

1. That the accessory building not be used for human habitation or a home occupation.
2. That the existing accessory building be demolished and removed prior to construction of the new accessory building.
3. That the accessory structure or the remainder of the rear yard not be used for the storage or parking of vehicles.”

Carried

Application: A-18/14
Owner: Shugang Li
Agent: n/a
Location: 76 Niska Road
In Attendance: Shugang Li

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

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Mr. Li replied the sign was posted and the staff comments were received. He explained that he received positive comments from staff and he is hoping the apartment can be approved by the Committee.

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 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 4.15.1.5 of Zoning By-law (1995)-14864, as amended, for 76 Niska Road, to permit a two bedroom accessory apartment in the basement of the residential dwelling to have an area of 100 square metres (1,076 square feet) when the By-law requires that an accessory apartment shall not exceed 45% of the total floor area of the building and shall not exceed a maximum of 80 square metres in floor area, be approved.”

Carried

Application: **A-21/14**
Owner: **Allison Fry**
Agent: **Stephen Fry**
Location: **16 Wood Duck Court**
In Attendance: **n/a**

The applicant was absent from the meeting. Due to a pecuniary interest declared for this application by one of the Committee members, the Committee did not have a quorum to make a decision on the application. It was agreed to arrange the next available time to hear the application so that a decision can be rendered in a timely fashion.

The meeting adjourned at 5:20 p.m.

D. Kelly
Chair

Minna Bunnett, ACST(A)
Acting Secretary Treasurer