



**COMMITTEE OF ADJUSTMENT
MINUTES**

The Committee of Adjustment for the City of Guelph held its Regular Meeting on Thursday May 12, 2016 at 4:00 p.m. in Council Chambers, City Hall, with the following members present:

B. Birdsell, Chair
K. Ash, Vice Chair
M. Bosch
S. Dykstra
L. Janis
P. Ross

Regrets: D. Kendrick

Staff Present: D. McMahon, Acting Secretary-Treasurer
S. Samuel, Legislative Coordinator
L. Sulatycki, Planner

Disclosure of Pecuniary Interest and General Nature Thereof

There were no disclosures.

Approval of Minutes

Moved by M. Bosch
Seconded by P. Ross

THAT the Minutes from the April 14, 2016 Regular Meeting of the Committee of Adjustment, be approved as circulated.

CARRIED

Requests for Withdrawal or Deferral

There were no requests.

Current Applications

Application: A-29/16
Owner: Gemini Homes Inc.
Agent: Brian Beatty – Black, Shoemaker, Robinson & Donaldson Ltd.
Location: Summit Ridge (Plan 61M-194, Block 34)
In Attendance: Nancy Shoemaker

Ms. N. Shoemaker, agent for the owner, indicated that the notice sign was posted and comments were received.

Ms. N. Shoemaker outlined the application.

In response to a question from member S. Dykstra, Ms. N. Shoemaker indicated that she did not believe any fences would be placed on the subject property and that the matter of fences should be considered as part of the site plan process.

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 K. Ash
Seconded by M. Bosch

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 5.3.2 Row 5a of Zoning By-law (1995)-14864, as amended, for Summit Ridge Drive (Plan 61M-194, Block 34), to permit an exterior side yard setback of 1.5 metres, when the By-law requires for a townhouse in the R.3B zone, a minimum exterior side yard of 4.5 metres, be **APPROVED**, subject to the following condition:

1. The Owner agrees to submit and receive approval from the City, in accordance with Section 41 of The Planning Act, a fully detailed site plan indicating the location of buildings, landscaping, parking, circulation, access, lighting, grading and drainage and servicing to the satisfaction of the General Manager of Planning and Building and the General Manager/City Engineer. Furthermore, the owner shall develop the said lands in accordance with the approved site plan.

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted condition of approval, this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application: A-30/16
Owner: Keiran Pattullo Graf
Agent: N/A
Location: 143 London Road West
In Attendance: Keiran Pattullo Graf

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. K. Graf, owner, replied that the sign was posted and comments were received.

Mr. K. Graf outlined the 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 S. Dykstra
Seconded by K. Ash

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 right side yard setback of 1.02 metres for the proposed rear addition, when the By-law requires, for a single detached dwelling in the R.1B zone not exceeding two storeys in height, a minimum side yard of 1.5 metres, be **APPROVED**, subject to the following condition:

1. That the variance applies to only the right side yard setback in general accordance with the sketch provided in the Public Notice.

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted condition of approval, this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application: B-15/16
Owner: Victoria Park Village Inc.
Agent: Nancy Shoemaker – Black, Shoemaker, Robinson & Donaldson Ltd.
Location: 1159 Victoria Road South
In Attendance: Nancy Shoemaker
Lino Pizziola

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Ms. N. Shoemaker, agent for the owner, replied that the sign was posted and comments were received.

Ms. N. Shoemaker outlined the application.

Ms. S. Shoemaker indicated that she opposes condition number 3 for road widening because the Official Plan only indicates that the City may require dedications for road widening as a condition of development and no development was to take place on the subject property. Furthermore, she added that the Official Plan defines development as the creation of a new lot, change in land use, the construction of buildings or structures which require approval under the Planning Act, site alteration, filling, rating, excavation, forms of intensification, infill development or redevelopment and that none of these activities were taking place on the subject property.

Ms. N. Shoemaker asked the Committee to consider the fairness of conditions such as road widening and a Record of Site Condition which could be onerous on the applicant considering that no development was taking place. Additionally, she noted that if development was to occur in the future it would require Council approval for a zone change or staff approval through the site plan process; both of which would allow for the City to incorporate the requested road widening. Ms. N. Shoemaker reiterated that she did not believe development was taking place on the subject property at this time and that therefore the conditions relating to road widening and Record of Site Condition should not be imposed.

Member S. Dykstra suggested that while the Record of Site Condition could be costly there would be no economic or physical impact to the property as a result of the proposed condition regarding road widening. Furthermore, he suggested that if the City did not require the 3 metre road widening as part of this application it could create a situation where the land would have to be expropriated in the future.

In response to comments from Member S. Dykstra, Ms. N. Shoemaker indicated that there was an additional cost in the form of barring and provision of a Record of Site Condition, which is required by the City, relating to the requested road widening. In addition she stated that once the plan of subdivision for the subject property was registered the parcel would be automatically or naturally severed.

In response to a question from member K. Ask, Ms. N Shoemaker stated that they were moving forward with the application now, instead of waiting for the natural severance, because when the land was sold previously to Victoria Village Park Inc. there was a limit of five years within which Victoria Park Village Inc. had to register the plan of subdivision. She indicated that the five year window will lapse at the end of this year and if the parcel isn't severed before then that it will remain owned by Victoria Park Village Inc. and be unused.

In response to a question from member K. Ask, Ms. N. Shoemaker indicated that she was opposing conditions 3, 4 and 5 and did not expect any environmental concerns to arise on the property because it has previously been used only as a residential and farm property. Furthermore, she suggested that the conditions were too onerous for a parcel of land which would have little value added to the rear of the residential property located at 1115 Victoria Road South.

Planner L. Sulatycki indicated that conditions 4 and 5 were standard conditions when the City asks for a road widening and are intended to ensure that any land acquired by the City is not contaminated. In response to comments from the applicant, planner L. Sulatycki indicated that if the plan of subdivision were to be registered it would create a natural severance and therefore the City would not be asking for a road widening because no consent would be required. She further indicated that Engineering Staff have requested the conditions at this time because there is a consent process underway and that staff continue to support these conditions.

Ms. N. Shoemaker indicated that the parcel of land in question was to be conveyed as a lot addition to 1115 Victoria Road South and no other nearby residential properties.

Member M. Bosch indicated that he believes future development of the site is possible and that the conditions are appropriate given the application to avoid future expropriation.

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 S. Dykstra
Seconded by M. Bosch

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 Concession 8, Rear Part Lot 5, (proposed "lands to be reconveyed" as shown on a sketch prepared by J.D. Barnes Limited, dated January 27, 2012, ref. no. 11-30-246-00-C), municipally known as 1159 Victoria Road South, an irregularly shaped parcel in the north corner of the lot, with a depth of 82.9 metres, and area of 5,483 square metres, as a lot addition to the rear of Concession 8, Rear Part Lot 5, Part 1 of Reference Plan 61R-5887, municipally known as 1115 Victoria Road South, be **APPROVED**, subject to the following conditions:

1. That the proposed severed parcel of land be conveyed to the abutting property owner as a lot addition only (Form 3 Certificate).
2. That the following covenant is incorporated in the deed: "The conveyance of (Severed Lands - legal description - Lot and Plan), City of Guelph, County of Wellington, designated as (Part and 61R-Plan Number) as a lot addition only to (Legal Description of Lands to be joined with - Lot and Plan), and shall not be conveyed as a separate parcel from (Legal Description of Lands to be joined with - Lot and Plan)."
3. That the owner deeds to the City free of all encumbrances a 3.0-metre (9.84 feet) wide parcel of land for a road widening across the entire frontage of 1115 Victoria Road South, (Part of Northeast Half of Lot 5, Concession 8, Rear (Geographic Township of Puslinch), Part 1, Reference Plan 61R-5887), City of Guelph, prior to endorsonation of the deeds.
4. Prior to endorsonation of the deeds, the owner shall submit a Phase 1 Environmental Site Assessment in accordance with the Record of Site Condition regulation (O. Reg. 153/04 as amended), describing the current conditions of the property known municipally as 1115 Victoria Road South to the satisfaction of the City. The City also requires the Qualified Person responsible for preparing the Phase 1 Environmental Site Assessment to submit a reliance letter, to indicate that, despite any limitations or qualifications included in the report, the City is authorized to rely on all information and opinion provide in the report.
5. If contamination is found, prior to endorsonation of the deeds, the owner shall complete the following at his expense:

- a) Submit all environmental assessment reports, including reliance letter, prepared in accordance with the Record of Site Condition regulation (O. Reg. 153/04 as amended), describing the current conditions of the property known municipally as 1115 Victoria Road South and the proposed remedial action plan to the satisfaction of the City;
 - b) Complete any necessary remediation work in accordance with the accepted remedial action plan and submit certification from a Qualified Person that the property known municipally as 1115 Victoria Road South meet the Site Condition Standards of the intended land use; and,
 - c) File a Record of Site Condition on the Provincial Environmental Registry for the property known municipally as 1115 Victoria Road South and submit the MOECC acknowledgement letter for the Record of Site Condition to the satisfaction of the General Manager/City Engineer.
6. That upon fulfilling and complying with all of the above-noted conditions, 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.
 7. 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.
 8. 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.
 9. 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.

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted conditions of approval, this application meets the criteria of section 51(24) of the Planning Act to which all consent applications must adhere.

CARRIED

Application: A-31/16
Owner: M. Lynn Broughton
Agent: N/A
Location: 132 Arthur Street North
In Attendance: Kerry Mullen

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. K Mullen, speaking on behalf of his common law partner M. Lynn Broughton, replied that the sign was posted and comments were received.

Mr. K. Mullen outlined the application.

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; and,

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 M. Bosch
Seconded by L. Janis

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 enlarge/extend the legal non-conforming use at 132 Arthur Street North, to permit the proposed 5.95 square metre addition to the rear of the existing semi-detached dwelling; and

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 132 Arthur Street North, to permit a right side yard setback of 0.55 metres for the proposed rear addition, when the By-law requires that the minimum side yard shall be 1.5 metres, be **APPROVED**.

REASONS:

This application is approved, as it is the opinion of the Committee that this application conforms with Section 45(2) of the Planning Act and meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application: A-32/16
Owner: Danielle Modolo and Jacques De Vos
Agent: Collin Beaumont/Steve Winter - Westmount Craftsmen Inc.
Location: 38 Edinburgh Road South
In Attendance: Jacques De Vos
Stephen Wintere

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. J. De Vos, owner, replied that the sign was posted and comments were received.

Mr. J. De Vos outlined the application.

In response to a question from member S. Dykstra, Mr. De Vos indicated that there was no plan to alter or remove the existing front face of the dwelling and that it would be difficult to build an addition at the rear of the dwelling because of the current layout of the home, which includes a rental unit.

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 K. Ash
Seconded by P. Ross

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 5.1.2 Row 7 of Zoning By-law (1995)-14864, as amended, for 38 Edinburgh Road South,

- a) to permit a front yard setback of 0.03 metres, when the By-law requires for dwellings located within Defined Area Map Number 66, a minimum front yard setback of 6 meters or the average of the setbacks of the adjacent properties, being 3.2 meters; and
- b) to permit a side yard setback of 1.14 metres, when the By-law requires a minimum side yard setback of 1.5 metres,

be **APPROVED**, subject to the following conditions:

- 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 concrete porch, concrete pedestals with a concrete cap that encroach on the Edinburgh Road South Street right-of-way.
- 2. That the side yard setback variance applies to only the left side yard in general accordance with the sketch provided in the Public Notice

3. 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.

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted conditions of approval, this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application: A-33/16
Owner: Palmerino Sacchetti
Agent: Alvin Brown – AWB Construction, Consult, & Design
Location: 58 Dean Avenue
In Attendance: Alvin Brown
Palmerino Sacchetti

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. A. Brown, agent for the owner, indicated that the sign was posted and comments received.

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 P. Ross
Seconded by M. Bosch

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 58 Dean Avenue, to permit the accessory apartment to have an area of 90.3 square meters, being 24% of the total floor area, when the By-law requires that an accessory apartment not exceed 45% of the total floor area of the building and shall not exceed a maximum of 80 square meters in floor area, whichever is lesser, be **APPROVED**.

REASONS:

This application is approved, as it is the opinion of the Committee that this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application: A-34/16
Owner: Joylife Imperial Towers Limited
Agent: N/A
Location: 978 Paisley Road
In Attendance: Al Allendorf
Kathryn Hookey
Andy Stephenson
Robert Hookey
Shawn Chisholm

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. A. Allendorf, a senior planner for Joylife Imperial Towers Limited, indicated that the sign was posted and comments received.

Mr. A. Allendorf outlined the application with specific reference to what he considered to be the perceived front and rear yards versus what the Zoning By-law defines as the rear and front yards. Additionally, Mr. A. Allendorf indicated that increasing the floor space index did not increase the density or number of units permitted on the site.

In response to questions from Chair B. Birdsell, planner L. Sulatycki and Acting-Secretary Treasurer D. McMahon confirmed that Parks Planning staff had suggested that conditions 2 and 3 were no longer supported by staff and should not be included in the Committees decision.

In response to a question from member K. Ask, Mr. A. Allendorf indicated that all four apartment buildings are located on the same property.

Member K. Ash suggested that it appeared that the circulation of public notices relating to the application was incomplete because it was not based on the correct dimensions of the subject property.

Acting Secretary-Treasurer D. McMahon indicated that the circulation of public notices was based on property dimensions as defined by the City's GIS mapping system. Planner L. Sulatycki indicated that she believed the notices were not circulated based on the correct dimensions of the subject property.

Chair B. Birdsell indicated that it was within the decision making capacity of the Committee to decide whether or not proper public notice had been given for the application.

Planner L. Sulatycki indicated that the Planning Act defines proper public notice as the posting of a sign and the circulation of notices within a specific area in relation to the subject property.

In response to a question from member S. Dykstra, Acting Secretary-Treasurer D. McMahon indicated the application, if deferred, could be brought back to the June 9, 2016 regular Committee of Adjustment meeting.

THAT Application A-34/16 for 978 Paisley Road, be **DEFERRED** sinedie, and in accordance with the Committee's policy on applications deferred sinedie, that the application will be considered to be withdrawn if not dealt with within 12 months of deferral.

Moved by K. Ash
Seconded by L. Janis

REASONS:

This application is deferred, as it is the opinion of the Committee that proper public notice in accordance with O. Reg. 200/96, s. 3(1)(2) was not provided.

CARRIED

Applications: **A-35/16& A-36/16**
Owner: **115 Fleming Holdings Inc.**
Agent: **Kyle Bittman, Coletara Development**
Location: **115 & 129 Fleming Road (Plan 61M-202, Block 9) &**
 98 Pettitt Drive (Plan 61M-202, Block 5)
In Attendance: **Kyle Bittman**

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. K. Bittman, agent for the owner, replied that the sign was posted and staff comments were received.

Mr. K. Bittman outlined the application and, in reference to a request for a refund of application fees for files A-35/16 and A-36/16, indicated that during the draft plan of subdivision process the City requested 0.3 metre reserves to prevent driveways from being added to the corner units in the future. In the site plan process these 0.3 metre reserves were not calculated with regard to the side yard setbacks and therefore three of the corner units require variances to accommodate the 0.3 metre reserves.

In response to a question from member M. Bosch, planner L. Sulatycki indicated that the 0.3 metre reserves were not shown on the submitted site plan drawings and that if they had been included site plan approval would not have been issued. Additionally, she indicated that because the 0.3 metre reserves were not shown site plan approval was granted and building permits were issued for the subject property.

In response to a question from member M. Bosch, planner L. Sulatycki indicated that if the 0.3 metre reserves had been included in the drawings submitted as part of the site plan process the applicant could have shifted the buildings so that minor variances weren't required or could have applied for minor variances prior to site plan approval.

In response to a question from member S. Dykstra, Mr. K. Bittman indicated that the setback variances requested in the application were slightly larger than those which were present at the site.

Application A-35/16

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 K. Ash
Seconded by M. Bosch

THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, variances from the requirements of Section 5.3.3.2.17.2.2 of Zoning By-law (1995)-14864, as amended, for Plan 61M-202, Block 9, to permit an exterior side yard of 3.07 metres for 115 Fleming Road, and to permit an exterior side yard of 3.03 metres for 129 Fleming Road, when the By-law requires for a townhouse in the R.3B-17 zone, a minimum exterior side yard setback of 3.45 metres, be **APPROVED**.

REASONS:

This application is approved, as it is the opinion of the Committee that this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Application A-36/16

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 K. Ash
Seconded by M. Bosch

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 5.3.3.2.17.2.2 of Zoning By-law (1995)-14864, as amended, for 98 Pettitt Drive (Plan 61M-202, Block 5), to permit an exterior side yard of 3.2 metres, when the By-law requires for a townhouse in the R.3B-17 zone, a minimum exterior side yard setback of 3.45 meters, be **APPROVED**.

REASONS:

This application is approved, as it is the opinion of the Committee that this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Other Business

Acting Secretary-Treasurer D. McMahon noted that a written request for a full refund of the two application fees (\$1,530.00) was submitted by Mr. K. Bittman, agent for Files A-35/16 and A-36/16 regarding 115 and 129 Fleming Road, and 98 Pettitt Drive. A copy of this correspondence regarding the refund request was provided to the Committee members.

In response to a question from member K. Ash, planner L. Sulatycki indicated that when the plan was registered the 0.3 metre reserve was shown but that it was not shown at the time of site plan approval.

Mr. K Bittman indicated that if the 0.3 metre reserve had been shown on the site plan then the minor variances included in the application would not have been required.

Member M. Bosch indicated that regardless of whether or not the reserves had been included on the site plan a variance would still have been required and that therefore the refund request should not be granted.

Moved by K. Ash
Seconded by M. Bosch

THAT the full combined application fees, being \$1,530.00 for applications A-35/15 and A-36/16, 115 and 129 Fleming Road and 98 Pettitt Drive, not be refunded to the applicant.

CARRIED

Adjournment

Moved by M. Bosch
Seconded by K. Ash

THAT the hearing of the Committee of Adjustment be adjourned at 5:12 p.m.

CARRIED

B. Birdsell
Chair

D. McMahon
Acting Secretary-Treasurer