



Minutes of the 16th Meeting of the Committee of Adjustment

Meeting Date: Thursday December 06, 2018
Meeting Time: 7:00 p.m.
Meeting Location: Whitby Municipal Building
575 Rossland Road East, Committee Room 1

Present:

N. Chornobay, Chair
S. Haslam
J. Cardwell
B. O'Carroll
D. McCarroll
J. Taylor, Manager of Planning Administration
J. Malfara, Secretary-Treasurer

Item 1: Disclosure of Interest:

There was no disclosure of interest by the members of the Committee of Adjustment

Carried

Item 2: Public Hearings

A/70/18

The LaFrance Group on behalf of S. Gandhi and R. Bhargava 15 Annavita Court

An application has been received from The LaFrance Group on behalf of S. Gandhi and R. Bhargava for a variance from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to reduce the minimum required rear yard setback of an existing accessory structure that includes a window facing the rear lot line from 7.5m to 0.7m.

The requested variance is required to permit the continued use of an existing accessory structure located within the rear yard of the subject property. A building permit was issued by the Town of Whitby for the existing structure for which a rear yard facing window was installed by the applicant after building permit issuance.

This Minor Variance application was considered at the November 8, 2018 Committee of Adjustment meeting, but was tabled pending additional information from the applicant regarding options to conform to the Ontario Building Code.

The subject property is located at 15 Annavita Court and is zoned Residential (R1A*) within the Town of Whitby Zoning By-law 1784.

In Support of Application

Paul LaFrance

In Opposition of Application

No one in attendance

The Chair introduced the application and asked if anyone would like to speak to the subject application.

P. LaFrance introduced himself to the Committee as the contractor tasked with constructing the accessory structure located in the rear yard of the subject property. He noted that this project was part of a television show, and after the project was started it was determined that a window overlooking the open space would allow more natural light into the accessory structure.

P. LaFrance expressed that he did not anticipate the installation of a new window being an issue, even though it did not comply with the Zoning By-law. It was his opinion that the intent of the By-law would be met.

The Chair asked if there were any questions from the Committee.

J. Cardwell asked the applicant if he has consulted with the Town of Whitby Building Division regarding this application.

P. LaFrance replied yes. He has had conversations with the Building Division with regards to the possible requirement of installing a fire shutter above the window in order to satisfy the Ontario Building Code.

J. Cardwell asked the applicant if he was aware that the surface area of the window may have to be reduced to comply with the limiting distance as outlined in the Ontario Building Code.

P. LaFrance advised that he was aware.

B. O'Carroll asked the applicant if he was aware that after a building permit is issued the building must be constructed per the approved permit drawings.

P. LaFrance replied yes. The installation of the window was a calculated risk as they were in the midst of filming a television show.

B. O'Carroll advised that if the variance is approved the Committee will not know what will be required for the applicant to satisfy the conditions of the Building Division.

P. LaFrance replied that after discussions with the Building Division he knows what is required to comply with the Ontario Building Code.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no correspondence was received.

J. Taylor advised the Committee that a condition has been provided by the Town of Whitby Building Division. This condition must be satisfied in order for the variance to be in effect.

The Chair asked if there was anyone from the public who wished to speak to the subject application. There was no one.

Moved by: J. Cardwell

That the application to reduce the minimum required rear yard setback of an existing accessory structure that includes a window facing the rear lot line from 7.5m to 0.7m located at 15 Annavita Court be **Granted** subject to the following conditions:

1. The site grading and all services shall conform to the requirements of the Public Works Department;
2. Roof drainage from the existing structure shall not be directed onto the adjacent property; and

3. The maximum area of glazed openings in an exposed building face shall conform to Table 9.10.15.4 of the 2012 Ontario Building Code Compendium and to the satisfaction of the Town of Whitby Building Division.

Carried

Reason: The members of the Committee were of the opinion that the variance is minor in nature; that the general intent and purpose of the By-law and the Official Plan is being maintained, and further that the granting of the application is desirable and would result in the appropriate development of the property.

Having considered the contents of all submissions, the staff report and oral submissions had an effect on the Committee's decision.

Item 2: Public Hearings

A/71/18

**Curtis and Paula Mulvaney
121 Hazelwood Drive**

An application has been received from Curtis and Paula Mulvaney for a variance from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to increase the maximum permitted encroachment of a covered porch projecting from the first storey of a dwelling unit into a required minimum front yard from 1.5m to 1.95m.

The subject property is located at 121 Hazelwood Drive and is zoned Second Density Residential (R2) in the Town of Whitby Zoning By-law 1784.

The requested variance is required to permit the construction of a new porch projecting from the first storey of a dwelling unit into a front yard.

In Support of Application	Curtis Mulvaney (Applicant) Paula Mulvaney (Applicant)
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In Opposition of Application	No one in attendance
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The Chair introduced the application and asked if anyone would like to speak to the subject application.

C. Mulvaney introduced himself to the Committee as the owner of the subject property. He advised the Committee that his intentions are to construct a covered front porch at the front of the dwelling. C. Mulvaney stated that a porch can be constructed to comply with the Zoning By-law, however, the size of the porch would be undesirable.

The Chair asked if there were any questions from the Committee. There were none.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no correspondence was received.

The Chair asked if there was anyone from the public who wished to speak to the subject application. There was no one.

Moved by: D. McCarroll

That the application to increase the maximum permitted encroachment of a covered porch projecting from the first storey of a dwelling unit into a required minimum front yard from 1.5m to 1.95m located at 121 Hazelwood Drive be **Granted** subject to the following conditions:

1. The site grading and all services shall conform to the requirements of the Public Works Department; and
2. Roof drainage from the existing structure shall not be directed onto the adjacent property.

Carried

Reason: The members of the Committee were of the opinion that the variance is minor in nature; that the general intent and purpose of the By-law and the Official Plan is being maintained, and further that the granting of the application is desirable and would result in the appropriate development of the property.

Having considered the contents of all submissions, the staff report and oral submissions had an effect on the Committee's decision.

Item 2: Public Hearings

A/72/18

**Walter Walgate and Elizabeth Gallop
219 Bowman Ave**

An application has been received from Walter Walgate and Elizabeth Gallop for variances from the provisions of the Town of Whitby Zoning By-Law 2585.

The application is for permission to:

1. Reduce the minimum required interior side yard setback (north) from 0.38m to 0.0m to accommodate an existing car port; and
2. Reduce the minimum required interior side yard setback (north) to any soffit or eaves from 0.3m to 0.0m.

The subject property is located at 219 Bowman Ave and is zoned Residential Type Two (R2) in the Town of Whitby Zoning By-law 2585.

The requested variances are required to recognize an existing 0.0m carport and eaves setback to the northerly property line.

In Support of Application

Walter Walgate (applicant)
Elizabeth Gallop (applicant)

In Opposition of Application

Robert Bowman
Joan Bowman

The Chair introduced the application and asked if anyone would like to speak to the subject application.

E. Gallop introduced herself to the Committee as one of the owners of the subject property. She advised the Committee that the property was purchased by W. Walgate in 2006, and when the property was purchased W. Walgate was instructed that there was no existing property survey available. At the time of purchase, W. Walgate was made aware that the north property line was signified by a concrete curb located in the front yard and a chain-link fence located in the side and rear yard.

E. Gallop stated that two variances were approved in 2017 that allowed them to increase the width of their carport to accommodate 2 parking spaces.

E. Gallop advised the Committee that after the carport was constructed, her neighbour R. Bowman (221 Bowman Avenue) advised them that the carport support columns were encroaching onto his property. A letter was also received by E. Gallop from R. Bowman's lawyer advising of this issue.

E. Gallop stated that in response to the letter received from R. Bowman's lawyer, she and W. Walgate altered the base of the carport support columns to ensure that there was no encroachment, roof leaders were diverted away from R. Bowman's property, and a buried perforated drain pipe that was previously located between the two properties was reinstalled.

E. Gallop further expressed that in her opinion the existing carport conforms to the streetscape, it is an efficient use of space and is desirable, and received a building permit from the Town.

The Chair asked if there were any questions from the Committee.

S. Haslam asked the applicants if they had a survey of the property.

W. Walgate replied no.

S. Haslam asked if the wood fence that abuts the north property line is owned by the neighbour (R. Bowman).

W. Walgate replied yes.

S. Haslam asked the applicant if he grants the neighbour access to his property when the fence requires repair, painting, etc.

W. Walgate replied that he previously provided approval for R. Bowman to access his property when the fence required repair and/or maintenance.

J. Cardwell asked the applicant how the carport posts were sited.

W. Walgate replied that the contractor was responsible for installing the posts. The site plan that was prepared for the contractor was based on the assumed property line characterised by the concrete curb located between his property and 221 Bowman Avenue.

S. Haslam asked the applicant who prepared the most recent survey works and if a vertical survey was prepared as well.

W. Walgate replied that the survey staking was commissioned by his neighbour, R. Bowman in 2018, and a vertical survey was not completed.

The Chair asked if there was anyone from the public who wished to speak to the subject application.

R. Bowman introduced himself as the owner of 221 Bowman Avenue, which is the neighbouring property to the north. He expressed that in 2017 when the applicant's submitted their original Minor Variance application, he submitted a letter of objection to the Committee of Adjustment.

R. Bowman expressed that he is objecting to the requested variances on the basis that the Committee of Adjustment had already granted relief to the applicant in 2017.

R. Bowman confirmed that the existing wood fence situated between his property and the applicant's property is owned by him and is located entirely on his property. The fence was located on his property to allow for a perforated drain pipe to be installed below grade between the two properties that spans from the rear yards to the street line.

R. Bowman advised the Committee that the applicant removed the drain pipe as well as paver stones that were located on his property during the construction of the carport. He further noted that a surveyor was retained in 2018 at his expense to confirm the location of the actual property line.

R. Bowman noted that he has since retained a lawyer in light of the observed issues. The lawyer has provided letters to the applicant advising them of R. Bowman's concerns.

The Chair asked if there was anyone else from the public who wished to speak to the subject application.

J. Bowman introduced herself to the Committee also as an owner of 221 Bowman Avenue. She expressed her objection with the requested variances and advised the Committee that snow from the applicant's carport will blow off its roof and onto her side yard walkway as a result of the reduced setback.

J. Bowman stated that anytime someone is constructing something they should obtain a legal survey. She also noted that the concrete curb referenced by the applicant was never a property line reference, and was only put in place after a flowerbed previously located between her property and the applicant's property was removed.

B. O'Carroll asked where the perforated drain pipe is located.

R. Bowman replied that the pipe is situated on the common property line.

B. O'Carroll asked if the pipe is still connected.

R. Bowman replied yes. The pipe was reconnected after his lawyer contacted W. Walgate.

J. Bowman stated that damage was done to their property and it has yet to be remediated.

D. McCarroll asked if the eaves located on the new carport extension are connected to the new drain pipe.

R. Bowman replied yes.

The Chair asked if the roof of the carport encroaches past the property line.

R. Bowman advised that he does not know, but he intends to confirm this information through a vertical survey.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no written correspondence was received, but he had a phone conversation with R. Bowman.

B. O'Carroll stated that the damage was a separate issue from the requested variances.

R. Bowman replied that the damages would not have occurred if the applicant adhered to the 2017 Minor Variance approval.

J. Taylor asked R. Bowman if the damages that he is referring to relates to the removal of interlock brick on the south side of his wood fence.

R. Bowman replied yes.

S. Haslam asked if the side yard setback applies to the footing below grade or only to the above grade structure.

J. Taylor replied that the setback is from the property line to the structure above grade, however, no portion of any structure above or below grade shall encroach onto the neighbouring lands.

The Chair asked if there was anyone else wishing to speak to the application. There was no one.

S. Haslam stated that he was not in support of the variances and noted that the onus was on the applicant to confirm the property boundary.

Moved by: S. Haslam

That the application to (1) reduce the minimum required interior side yard setback (north) from 0.38m to 0.0m to accommodate an existing car port; and (2) reduce the minimum required interior side yard setback (north) to any soffit or eaves from 0.3m to 0.0m located at 219 Bowman Ave be **Denied**.

Carried

Reason: The members of the Committee were of the opinion that the variances do not meet the general intent and purpose of the Zoning By-law.

Having considered the contents of all submissions, oral submissions had an effect on the Committee's decision.

Item 2: Public Hearings

A/73/18

**RioKim Holdings (Ontario) Inc.
1629 Victoria Street East**

An application has been received from RioKim Holdings (Ontario) Inc. for a variance from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to reduce the minimum single user unit size (Unit 15) for any Retail Warehouse Facility use from 929.0 square metres to 599.0 square metres.

The requested variance is required to permit a Retail Warehouse Use (tenant) to occupy a 599.0 sq.m unit within the existing building.

The subject property is located at 1629 Victoria Street East and is zoned Automobile Service Station/ Car Wash (AS-CW), and Special Purpose Commercial – Retail Warehouse Exception 5 (C2-S-RW-5) in the Town of Whitby Zoning By-law 1784.

In Support of Application	Oz Kemal (Agent) Stuart Craig (Applicant)
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In Opposition of Application	No one in attendance
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The Chair introduced the application and asked if anyone would like to speak to the subject application.

O. Kemal introduced himself to the Committee as the applicants Planner. He stated that the building located on the subject property was once occupied by the Sears Home Store. Since the closing of the Sears Home Store his client has created new units within the building and is in the process of leasing them to new tenants.

O. Kemal noted that Unit 15 is the smallest unit in the building, and the original intention was to lease this space to a restaurant or financial institution. The surrounding area has since become a hub for home furnishing stores and tenancing this unit (Unit 15) to a restaurant or financial institution has proved unsuccessful.

O. Kemal also stated that a furniture store tenant (retail warehouse use) is currently interested in leasing the space, and therefore a variance is required. No alterations to the site plan or parking lot are proposed.

The Chair asked if there were any questions from the Committee.

B. O'Carroll stated that she had no concerns with the variance.

The Chair asked if the variance will only apply to Unit 15.

J. Taylor replied that the variance could apply to the entire building if deemed appropriate by the Committee. Recent discussions were conducted with the Region of Durham Planning Department. The Region advised that their previous policies regarding the minimum unit size for a retail warehouse use was not reflective of current demands, and their new policies as adopted through ROPA 128 interprets that the minimum retail warehouse size applies to the building as a whole and not individual uses located within. The Town of Whitby Planning Department agrees with the Regions policy interpretation.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no correspondence was received.

The Chair asked if there was anyone from the public who wished to speak to the subject application. There was no one.

Moved by: B. O'Carroll

That the application to reduce the minimum single user unit size for any Retail Warehouse Facility use from 929.0 square metres to 599.0 square metres located at 1629 Victoria Street East be Granted subject to the following condition:

1. That the site grading and all other services conform to the requirements of the Public Works Department.

Carried

Reason: The members of the Committee were of the opinion that the variance is minor in nature; that the general intent and purpose of the By-law and the Official Plan is being maintained, and further that the granting of the application is desirable and would result in the appropriate development of the property.

Having considered the contents of all submissions, the staff report and oral submissions had an effect on the Committee's decision.

Item 2: Public Hearings

A/74/18

Mattamy (Monarch) Limited
1370 Dundas Street West

An application has been received from Mattamy (Monarch) Limited for a variance from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to reduce the minimum required rear yard setback from 7.5m to 6.4m for proposed lots 32-49 on the applicants submitted Site Plan.

The subject property is located at 1370 Dundas Street West and is zoned Mixed Use Two (MX2) in the Town of Whitby Zoning By-law 1784.

In Support of Application	Mehr Hazari (Applicant) Liana Dimaranan (Applicant)
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In Opposition of Application	No one at this time.
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The Chair introduced the application and asked if anyone would like to speak to the subject application.

L. Dimaranan introduced herself to the Committee. She provided an overview of the proposed development and advised the Committee that a variance is required to reduce the minimum required rear yard setbacks for 18 proposed street townhouse dwellings located on the subject property.

The Chair asked if there were any questions from the Committee. There were none.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no correspondence was received.

The Chair asked if there was anyone from the public who wished to speak to the subject application. There was no one.

Moved by: J. Cardwell

That the application to reduce the minimum required rear yard setback from 7.5m to 6.4m for proposed lots 32-49 on the applicants submitted Site Plan located at 1370 Dundas Street West be **Granted** subject to the following conditions:

1. The site grading and all services shall conform to the requirements of the Public Works department; and

2. Roof drainage from the proposed structures shall not be directed onto the adjacent property.

Carried

Reason: The members of the Committee were of the opinion that the variance is minor in nature; that the general intent and purpose of the By-law and the Official Plan is being maintained, and further that the granting of the application is desirable and would result in the appropriate development of the property.

Having considered the contents of all submissions, the staff report and oral submissions had an effect on the Committee's decision.

Item 2: Public Hearings

A/75/18

**Mattamy (Monarch) Limited
1370 Dundas Street West**

An application has been received from Mattamy (Monarch) Limited for variances from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to:

1. Reduce the minimum number of required commercial parking spaces from 14 spaces to 10 spaces;
2. Increase the maximum width of a private driveway on a lot serving a one car garage from 4.4m to 7.0m;
3. Reduce the minimum rear yard setback to an unenclosed parking space from 2.75m to 0.2m; and
4. Amend the definition of a Street Townhouse Dwelling to include non-residential floor space situated on the first storey of the building.

The subject property is located at 1370 Dundas St W and is zoned Mixed Use Two (MX2) in the Town of Whitby Zoning By-law 1784.

The requested variances are required to permit the development of five street townhouse dwelling units fronting onto George Holley Street, with non-residential uses located at the ground floor level.

In Support of Application

Mehr Hazari (Applicant)

Liana Dimaranan (Applicant)

In Opposition of Application

No one at this time.

The Chair introduced the application and asked if anyone would like to speak to the subject application.

M. Hazari introduced herself to the Committee and advised that the requested variances are required to permit a proposed mixed-use block located at the north east corner of George Holley Drive and Des Newman Boulevard.

With regards to variance #1, M. Hazari stated that the reduction in the number of required commercial parking spaces is appropriate and that additional parking is located in the private driveways located at the rear of the mixed use block.

With regards to variance #2, M. Hazari expressed that the variance is required to permit the pairing of driveways located at the rear of the building. This would permit additional parking on the site which may also be used for the ground floor commercial uses.

With regards to variance #3, M. Hazari advised that the variance is appropriate and that the sightlines from the street townhouse dwellings will be maintained.

With regards to variance #4, M. Hazari advised that the variance to the definition of a street townhouse dwelling to require non-residential floor space on the ground floor will ensure that a mixed use development is created and will safe guard the non-residential use on the ground floor of each street townhouse unit.

The Chair asked if there were any questions from the Committee.

B. O'Carroll asked if parking at the rear of the building can be used for users of the ground floor commercial uses.

M. Hazari replied yes.

B. O'Carroll asked the applicant what uses may be permitted in the commercial units.

M. Hazari replied that uses such as a salon, barber, and other small scale commercial use may be permitted.

J. Taylor advised the Committee that the building will be subject to architectural control and the elevations will be reviewed by the Town of Whitby Planning Department.

M. Hazari circulated a conceptual rendering of the mixed use building to the Committee.

J. Cardwell asked the applicant if the entire ground floor will be for commercial uses.

M. Hazari replied that the majority of the ground floor will be dedicated for commercial uses, however, stairways and hallways leading to the residential units on the floor above will be excluded.

B. O'Carroll asked if the 2nd and 3rd floor will be residential.

M. Hazari replied yes.

J. Taylor advised the Committee that the proposed development will function in a similar way to the existing mixed use building located north east of Baldwin Street and Winchester Road East in Brooklin.

B. O'Carroll asked if a resident would be able to operate one of the ground floor commercial units, and also live in the residential units above.

M. Hazari replied yes.

The Chair asked J. Malfara, Secretary-Treasurer, if any correspondence had been received in relation to the subject application.

J. Malfara replied that no correspondence was received.

The Chair asked if there was anyone from the public who wished to speak to the subject application. There was no one.

Moved by: B. O'Carroll

That the application to (1) reduce the minimum number of required commercial parking spaces from 14 spaces to 10 spaces, (2) increase the maximum width of a private driveway on a lot serving a one car garage from 4.4m to 7.0m, (3) reduce the minimum rear yard setback to an unenclosed parking space from 2.75m to 0.2m; and (4) amend the definition of a Street Townhouse Dwelling to include non-residential floor space situated on the first storey of the building, located at 1370 Dundas St W be Granted subject to the following conditions:

1. That the site grading and all other services conform to the requirements of the Public Works Department.
2. That the first storey of each dwelling unit shall only contain non-residential floor space; and
3. A parking rationalization report/brief shall be prepared to the satisfaction of the Public Works Department.

Carried

Reason: The members of the Committee were of the opinion that the variances are minor in nature; that the general intent and purpose of the By-law and the Official Plan is being maintained, and further that the granting of the application is desirable and would result in the appropriate development of the property.

Having considered the contents of all submissions, the staff report and oral submissions had an effect on the Committee's decision.

Item 3: Approval of Previous Minutes

Moved by: J. Cardwell

That the minutes of the Committee of Adjustment held on Thursday November 8, 2018 be adopted.

Carried

Item 4: Other Business

There were no items raised under other business.

Item 5: Adjournment

Moved by: J. Cardwell

That this meeting of the Committee of Adjustment be adjourned.

Carried

Secretary Treasurer

Chair