

Minutes of the 11th Meeting

Committee of Adjustment



Meeting Date: Thursday August 17, 2023

Meeting Time: 7:00 p.m.

Meeting Location: Virtual Meeting

Present:

N. Chornobay, Chair

J. Cardwell

K. Docherty

S. Haslam

J. Rinella

R. Chow, Secretary-Treasurer

J. Taylor, Senior Manager, Zoning & Regulation

J. Malfara, Planner II, Policy Planning

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/40/23

**Uthayan Annalingham
2 Franklin Crescent**

An application has been received from Uthayan Annalingham for a variance from the provisions of Town of Whitby Zoning By-Law 1784.

The application is for permission to increase the maximum permitted building height from 8.0 m to 10.0 m.

The requested variance is required to permit a proposed single detached dwelling on the subject property.

The subject property is located at 2 Franklin Crescent and is zoned Residential Estate (RE).

In Support of Application: Phil Lamadeleine (Owner Representative)

In Opposition of Application: None at this time.

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

P. Lamadeleine introduced himself as the owner of Custom CADD, the company hired by the homeowner to design the home. He provided an overview of the proposal and explained the need for a variance. He also noted that as part of the subdivision agreement, the proposal has gone through architectural control.

The Chair asked for confirmation on how the height of the dwelling was calculated.

P. Lamadeleine responded that the height measurement was taken at the midpoint of the roof. He then explained that the height variance is needed to ensure desirable proportions of the dwelling, and that visually appealing proportions was a guideline given through the architectural control process for dwellings in this neighbourhood.

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

J. Cardwell asked R. Chow if any developments nearby will have similar height restrictions.

R. Chow stated that more minor variance applications may be expected for this neighbourhood as the height provisions for this area are low due to the age of the By-law.

J. Taylor elaborated that the By-law is dated and that similar variances have been successfully granted in a Residential Estate zone on Brawley Road, where numerous applicants required relief from the By-law's height provisions to be permitted to build dwellings taller than a bungalow.

There were no further questions from the Committee.

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

R. Chow advised the Committee 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: K. Docherty

That the application to increase the maximum permitted building height from 8.0 m to 10.0 m located at 2 Franklin Crescent be **Granted** subject to the following conditions:

1. That the site grading and services shall conform to the requirements of the Engineering Services department.
2. That architectural review and approval is obtained prior to the issuance of a building permit.

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.

A/41/23

**Thipeekaa Arumairajah
19 Lacroix Court**

An application has been received from Thipeekaa Arumairajah for a variance from the provisions of Town of Whitby Zoning By-law 1784.

The application is for permission to reduce the minimum required length of a driveway parking space from 5.8 m to 5.3 m.

The requested variance is required to permit an accessory apartment.

The subject property is located at 19 Lacroix Court and is zoned (R2C*).

In Support of Application: Thipeekaa Arumairajah (Owner and applicant)

Thileepan Yoganathan (Owner representative)

In Opposition of Application: None at this time.

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

T. Yoganathan introduced himself, provided an overview of the proposal, and explained the need for a variance.

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

S. Haslam asked for clarification on the comments written in the cover letter from the property owner. He asked if the homeowner was aware that vehicles must be parked within the lot lines of the property and if they are aware that vehicles are not permitted to encroach on the municipally owned portion of the driveway.

T. Yoganathan responded yes.

J. Taylor provided more detail on the proposal. He explained that the existing driveway parking space is shorter in length than what the By-law requires as it was built to conform to past By-law provisions in effect at the time of the dwelling's construction. He then explained that the proposed additional driveway parking space will be shorter than what the By-law requires at 5.3 m, but still adequate.

The Chair asked J. Taylor if the proposed additional parking space would be completely within the property.

J. Taylor responded yes. He elaborated that the proposed additional parking space would only be shorter than the By-law requirements for a portion of the space due to the curvature of the lot line.

The Chair asked if a vehicle could still fit in this proposed parking space despite the reduced size.

J. Cardwell asked what type of vehicle the applicant would park in that space.

T. Yoganathan responded that it would be a normal passenger car, not a big truck or SUV.

R. Chow stated that a larger vehicle such as the Ford F-150 measures 5.3 m in length so the average passenger vehicle would be able to fit in the proposed parking space.

K. Docherty asked J. Taylor if the Planning Department was in support of the proposal.

J. Taylor responded yes. He elaborated that similar variances have been approved.

K. Docherty asked if the dwelling has a single-car garage.

T. Yoganathan responded yes.

T. Arumairajah stated that the current residents of the dwelling only own one vehicle. If new residents are to live in the proposed accessory apartment, 2 of the 3 parking spaces to be provided on the property would be available to them.

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

R. Chow advised the Committee that no correspondence was received.

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

Ruby Burrell presented herself as the neighbour of 19 Lacroix Court. R. Burwell asked for an explanation of the proposal.

The Chair explained the proposal.

R. Burwell asked how the extra parking space would be provided.

The Chair explained that the parking space is already there but that it is not in conformity with the By-law provisions for minimum parking space dimensions.

R. Burwell asked if any additions would be made to the dwelling.

The Chair responded no.

R. Burwell asked if the variance only deals with the parking space.

The Chair responded yes.

R. Burwell asked if any changes would be made to the contour of the street.

J. Taylor responded no.

R. Burwell asked where the parking space will be located.

The Chair responded that the additional parking space is on the driveway.

R. Burwell asked if the parking space would encroach on any adjacent property.

The Chair responded no.

R. Burwell asked if the applicant seeks to widen their driveway.

The Chair responded that the application is to approve the additional parking space.

K. Docherty asked if such a variance is commonly requested to have three parking spaces.

J. Taylor responded that the applicant is seeking the variance to permit the undersized parking spaces as the applicant requires 3 spaces on their property in order to permit an accessory apartment.

There were no further questions from the Committee.

Moved by: J. Cardwell.

That the application to reduce the minimum required length of a driveway parking space from 5.8 m to 5.3 m located at 19 Lacroix Court be **Granted** subject to the following conditions:

1. That the site grading shall conform to the requirements of the Engineering Services department.
2. That a minimum 1m setback is required between the edge of the driveway and the streetlight pole in the boulevard.

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.

A/42/23

**Tracy and Eirik Mamoniw
605 Euclid Street**

An application has been received from Tracy and Eirik Mamoniw for variances from the provisions of Town of Whitby Zoning By-law 2585.

The application is for permission to (1) allow a home-based business within an existing accessory structure, and (2) to allow the occupant to employ one employee who is not an occupant of the dwelling.

The requested variances are required to permit a home-based business to operate from the existing accessory structure on the subject property.

The subject property is located at 605 Euclid Street and is zoned Residential Type 3 (R3).

In Support of Application: Tracy Mamoniw (Applicant)

Eirik Mamoniw (Applicant)

In Opposition of Application None at this time.

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

T. Mamoniw introduced herself to the Committee and provided an overview of the history of her ownership of the property and her home-based business, and her need for the variances. She explained that her property has a bungalow plus an accessory structure which was built by a previous owner. She converted the accessory structure into a living space where she began home-schooling her children followed by the operation of school-age daycare-type programs and activities for other children. She learned that the accessory structure was only permitted to be used for storage, so she requires variances to permit her home-based business.

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

J. Cardwell asked if there are washroom facilities.

T. Mamoniw responded that the accessory structure has no running water but that the main dwelling has washroom facilities that can be used for the home-based business.

E. Mamoniw added that washroom facilities may be added to the accessory structure in the future.

K. Docherty asked J. Taylor if granting the requested variances will permit any type of home-based business to operate on the property in the future, or if the variances will limit the property to a specific type of business.

J. Taylor explained that a daycare is currently permitted as a home-based business in a main dwelling, but not in an accessory structure, so a successful variance is needed. He further explained that the By-law has limitations overall to what anyone can do for their home-based business and those limitations will still apply to any home-based business in the applicants' accessory structure if the variance is granted.

K. Docherty asked if the Planning Department has any objections to the proposal.

J. Taylor responded that the Planning Department will be re-evaluating home-based business By-law provisions as there has been an increase in requests for home-based businesses in accessory structures and the By-law has older provisions.

K. Docherty asked the applicants if they had measures in place so that parents dropping off their children at the home-based business would not be disruptive to the neighbourhood.

T. Mamoniw responded that her driveway has ample space to accommodate vehicles at drop-off times, that her husband is not home during business hours therefore his vehicle does not occupy driveway space in the daytime, and that some of her neighbours have told her that their driveways can also be used for parking when parents are dropping off their children.

There were no further questions from the Committee.

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

R. Chow responded that 3 phone calls were received in support of the application and 1 email was received in opposition of the application, and that information on the correspondence was forwarded to the Committee members at an earlier date for their review.

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. Rinella.

That the application to (1) allow a home-based business within an existing accessory structure, and (2) to allow the occupant to employ one employee who is not an occupant of the dwelling located at 605 Euclid St be **Granted** subject to the following conditions:

1. That except for a home daycare, no more than three persons at any one time shall be present at any home-based business in the existing accessory structure to receive teaching and/or instruction;
2. That no more than two persons at any one time shall be present at any home-based business in the existing accessory structure to receive client-based treatment or services;

3. That a minimum of three parking spaces be provided on the property in accordance with the Zoning By-law (this condition only applies to Variance #2 to permit one non-occupant employee).

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.

A/44/23

Mohammad Ghofrani

79 Barkerville Drive

An application has been received from Mohammad Ghofrani on behalf of Abdul Khan for a variance from the provisions of Town of Whitby Zoning By-law 1784.

The application is for permission to reduce the interior side yard setback to a below grade access stairway from 0.6 m to 0.23 m.

The requested variance is required to permit below grade access stairs within the south interior side yard of the subject property.

The subject property is located at 79 Barkerville Drive and is zoned Low Density Residential (LD).

In Support of Application: None at this time.

In Opposition of Application: None at this time.

The Chair asked if the applicant was present.

The applicant was not present to speak.

S. Hussaini presented himself as the neighbour of 79 Barkerville Drive.

The Chair stated that the meeting could continue without the applicant but that the Committee would not be able to ask any potential questions to the applicant without them present.

S. Haslam recommended that the Chair introduce the application and allow the neighbour to speak, then see if the application should be tabled.

The Chair introduced the application and asked if the applicant was now present.

The applicant was not present to speak.

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

R. Chow advised the Committee that no correspondence was received.

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

S. Hussaini introduced himself as a resident of 81 Barkerville Drive and the neighbour of 79 Barkerville Drive. S. Hussaini stated that his side yard abuts the side yard of 79 Barkerville Drive and there is no fence dividing the lots. He asked if the proposal for below grade access stairs as well as construction work to build the proposal would

encroach into his property. He also asked if any grading work would go beyond the property limits of 79 Barkerville Drive.

J. Taylor stated that in order for the applicant to obtain a building permit, the Town of Whitby Building and Engineering divisions would have to review the project first, including any issues and work regarding grading and drainage. He also stated that all works will have to be contained within the subject property.

The Chair asked for clarification on the drainage situation.

J. Cardwell stated that water is anticipated to drain to the bottom of the stairs and a drain will be required.

S. Haslam asked if the 23 cm setback was measured up to the edge of the footing or up to the wall of the proposed stairs. He expressed concern that if the measurement was up to the edge of the wall, then the stairs would encroach into the abutting property.

J. Taylor stated the measurement was taken up to the edge of the footing.

S. Haslam asked if weeping tiles would be used for water drainage.

J. Taylor responded that the Engineering Department would determine what would be required for drainage.

K. Docherty stated her concern for any potential effects of the proposed stairs on the adjacent property, including the adjacent dwelling's foundation.

J. Taylor responded that there is a setback between the adjacent dwelling and the property line as well.

The Chair asked how equipment such as a lawnmower would be able to be transported into the rear yard.

S. Hussaini stated that the wider side yard is proposed to be occupied by the below grade access stairs and that the side yard on the other side of the property is narrower.

J. Taylor stated that it should be noted that the lot line is not straight and that while the side yard setback from the stairs would be 0.23 m at its narrowest point, the setback would gradually increase to 0.5 m at the west side of the stairs.

K. Docherty asked what rights S. Hussaini would have if the Town's Engineering department approved the proposal and, in the future, the project were to negatively impact S. Hussaini's property.

J. Taylor stated that the building permit would be issued by the Engineering Department with various requirements for grading and drainage. As long as the proposal is built in accordance with the drawings approved from the Engineering Department, negative impacts should not occur to the adjacent property.

J. Cardwell expressed his concern for the setback distance of the proposed stairs and his concern for the design of the stairs.

J. Taylor stated that the building department has the ability to ask the applicant to rebuild the stairs if they are not built to their satisfaction.

K. Docherty asked if the basement entrance could be located at the rear of the dwelling rather than in the side yard.

J. Taylor stated that alternative designs were discussed, however, the side entrance option was chosen.

The Chair asked if there were further questions or concerns from S. Hussaini.

There were no further comments.

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

R. Chow advised the Committee that no correspondence was received.

Moved by: S. Haslam.

That the application to reduce the interior side yard setback to a below grade access stairway from 0.6 m to 0.23 m located at 79 Barkerville Dr be **Tabled**.

Not carried

Reason:

A. Khan, the owner of 79 Barkerville Drive, entered the meeting. An opportunity was presented for him to speak.

A. Khan asked if the Committee could wait for his representative and engineer, M. Ghofrani, to join the meeting.

The Chair responded yes.

M. Ghofrani joined the meeting.

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

S. Haslam asked how excavation for the stairs would avoid touching the adjacent property.

M. Ghofrani responded that the project would not encroach on the neighbour's property.

S. Haslam and the Chair asked for an explanation of how that would be done.

M. Ghofrani responded that forming and vertical excavation could be used.

S. Haslam asked if a vertical retaining wall would be used because vertical excavation is illegal.

M. Ghofrani stated that there would be support to the vertical excavation to ensure that the excavation is permitted.

J. Cardwell and S. Haslam expressed their concern for the construction methods proposed.

K. Docherty asked how much space would be maintained in the side yard for any service easements that may exist.

M. Ghofrani explained that soil can be stabilized with temporary supports, followed by work on the footing, followed by backfilling. He then stated that only a portion of the proposed stairs has a 0.23 m side yard setback.

The Chair reiterated the concern of the Committee to M. Ghofrani about executing construction work in a tight space without encroaching on the neighbouring property. The Chair stated that he believes the stairs would be at least 6 feet deep.

M. Ghofrani said yes, the stairs would be at least 6 feet deep.

S. Haslam stated that the side of the trench would have to be angled back for safety. He asked how that would be done.

M. Ghofrani responded that cantilevered footing could be used and that a 0.23 m setback only exists at one portion of the proposed stairs, with more space available elsewhere.

The Chair asked M. Ghofrani how drainage would be addressed.

M. Ghofrani replied that a pipe could be provided for drainage and run-off water at the top of the retaining wall.

There were no further questions from the Committee.

Moved by: S. Haslam.

That the application to reduce the interior side yard setback to a below grade access stairway from 0.6 m to 0.23 m located at 79 Barkerville Drive be **Tabled** until after Town of Whitby staff have further discussion with the applicant to revise their proposal and/or provide further details on the construction process for the below grade access stairs, and after residents are adequately notified of any potential changes to the proposal.

Carried

Item 3: Approval of Previous Minutes

Moved by: K. Docherty

That the minutes of the Committee of Adjustment held on Thursday, July 27, 2023 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