

Minutes of the 1st Meeting

Committee of Adjustment

Meeting Date: Thursday January 23, 2020
Meeting Time: 7:00 p.m.
Meeting Location: Whitby Municipal Building
575 Rossland Road East, Committee Room 1

Present:

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

Item 1: Disclosure of Interest:

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

Carried

Item 2: Appointment of Committee of Adjustment Chair and Vice Chair

J. Malfara asked the Committee if there were any nominations for the position of the Chair.

D. McCarroll nominated N. Chornobay as the Chair for the 2020 term. There were no other nominations.

N. Chornobay accepted the nomination by proxy.

Moved by: D. McCarroll

Carried

J. Malfara asked the Committee if there were any nominations for the position of the Vice Chair.

J. Cardwell nominated S. Haslam as the Vice Chair for the 2020 term. There were no other nominations.

S. Haslam accepted the nomination.

Moved by: J. Cardwell

Carried

Item 3: Public Hearings

A/01/20

**2264787 Ontario Inc. (John Annis)
47 Ian Fleming Crescent**

An application has been received from 2264787 Ontario Inc. (John Annis), 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 exterior side yard setback from 4.5m to 3.5m.

The requested variance is required to permit the construction of a new one storey detached dwelling on the subject property.

The subject property is zoned Residential (R2B*) within the Town of Whitby Zoning By-law 1784.

In Support of Application

John Annis

Also in Attendance

Rita Dufresne
Donna Rousell

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

J. Annis introduced himself to the Committee as the owner of the subject property. He clarified that a building permit was issued to construct a 1948 sq.ft one storey dwelling; however, the permit has been revised to construct a 1450 sq.ft dwelling. He elected to construct a smaller dwelling as when initial construction began, while digging the foundation they were faced with poor soil conditions along the east portion of the property. The soils were not suitable for any development and it was decided that the dwelling should be shifted towards the west, away from the easterly lot line. J. Annis concluded that a variance is required to reduce the exterior side yard setback so he can maintain a larger interior side yard setback and site the proposed dwelling furthest away for the poor soil area to the east.

J. Taylor noted that this lot was a remnant parcel from the original surrounding subdivision. The lot was likely used to stock pile topsoil.

J. Annis noted that the poor soil conditions are generally limited to the area along the easterly property line.

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

J. Cardwell asked the applicant if any other soil tests were carried out.

J. Annis replied that they only conducted soil tests in the area along the east portion of the property.

The Chair noted that there are multiple variances currently applied to the property.

J. Taylor clarified that these variances were historical variances.

J. Annis noted that at one point the street was designed to be a cul-de-sac. The previous variances reflected the former parcel of land which was smaller in size and did not conform to certain provisions of the Zoning By-law. When it was decided that the road would be a through street, a parcel of land that would have been part of the cul-de-sac was acquired and added to the property. As such, the lot is now larger in size, and the previous variances are no longer required for the currently proposed dwelling.

The Chair asked staff if the previous variances can become null and void if the Committee approved this application.

J. Taylor replied that the Committee may add a condition to the variance; however, he will have to review the legislative powers of the Committee.

J. Annis stated to the Committee that the previously approved variances are not required.

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

J. Malfara 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.

R. Dufresne introduced herself to the Committee as the owner of the neighbouring property to the east (49 Ian Fleming Cres.). She expressed to the Committee that she has no major concerns with the requested variance, although she is concerned about the poor soil quality located along the east property line. She noted that when the original foundation was being dug the soil along the property line collapsed undermining the structural support to her walkway. She asked the Committee if they would like to see photos of the damage.

B. O'Carroll asked staff what is the recourse if the soil along the property line or foundation wall collapses again.

J. Taylor replied that prior to any construction activities, the applicant would be required to seek approval from the Building Department and that civil litigation may be required if a resolution is not achieved.

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

D. Rousell introduced herself to the Committee as the owner of the neighbouring property to the north (27 Ian Fleming Cres.). She noted that her concerns relate to the soil conditions in the easterly side yard, and hopes that due process if followed during the construction phase. She also asked the Committee what the variance is about.

B. O'Carroll stated that the variance is to reduce the minimum exterior side yard setback from 4.5m to 3.5m.

J. Cardwell noted that the variance if approved would allow the applicant to locate the dwelling closer to the street (west) and increase the width of the interior side yard (east) where the poor soil conditions are located.

B. O'Carroll stated that she was ready to make a motion to approve the variance subject to the inclusion of an additional condition which is "the previously approved variances that are not required to implement the site plan submitted with A/01/20 be repealed."

Moved by: B. O'Carroll

That the application to reduce the minimum required exterior side yard setback from 4.5m to 3.5m located at 47 Ian Fleming Crescent 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. Roof drainage from the proposed structure shall not be directed onto the adjacent property; and,
3. That the previously approved variances that are not required to implement the site plan submitted with A/01/20 be repealed.

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.

B. O'Carroll asked if there will be any other notable changes to the property and if any trees will be removed.

J. Kenthol replied that no trees will be removed; however, some will be pruned.

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

J. Malfara advised the Committee that no public 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 1) reduce the minimum required interior side yard setback to an existing one storey garage from 1.2m to 0.45m; and 2) reduce the minimum required exterior side yard setback to an existing dwelling from 6.0m to 4.2m located at 1023 Byron Street South be **Granted** subject to the following condition:

1. That the variance to reduce the interior side yard setback from 1.2m to 0.45m shall only apply to the existing one storey garage.

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: Public Hearings

A/03/20

Sean Loucks

17 Jarrow Crescent

An application has been received from Sean Loucks, 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 to a deck projecting from the first storey of a dwelling from 6.0m to 4.5m.

The requested variance is required to permit the removal of an existing rear yard deck, and the constriction of a larger deck projecting from the main floor of the one storey dwelling into the rear yard.

The subject property is zoned Residential (R2B*) within the Town of Whitby Zoning By-law 1784.

In Support of Application

Sean Loucks

Also in Attendance

Drew Cardinal

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

S. Loucks introduced himself to the Committee as the contractor (Deck Guys). He advised the Committee that a new rear yard deck extending from the main floor of the dwelling is proposed. The new deck will replace the existing deck that is currently located in the rear yard. The existing deck is too small and only has enough room for one person. The proposed deck will be larger and more suitable for the family residing in the dwelling.

S. Loucks noted that the proposed deck will not comply with the minimum required rear yard setback, and that the majority of the setback encroachment will include the proposed stairs from the elevated deck to the yard below.

The Chair asked the applicant if the open area below the deck will be enclosed.

S. Loucks replied no.

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 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: D. McCarroll

That the application to reduce the minimum required rear yard setback to a deck projecting from the first storey of a dwelling from 6.0m to 4.5m located at 17 Jarrow Crescent 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; and
2. Roof drainage from the proposed 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 3: Public Hearings

A/04/20

**Kalicharan Yalala
207 Willowbrook Drive**

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

The application is for permission to permit an accessory apartment within a linked dwelling having a minimum lot frontage of 9.4m.

The subject property is zoned Residential (R3A*) within the Town of Whitby Zoning By-law 1784.

In Support of Application	K. Yalala
In Opposition of Application	S. Cardone R. Store P. Dawson M. Peacock

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

K. Yalala introduced himself to the Committee as the owner of the subject property. He advised the Committee that he is planning to construct a legal basement apartment within the dwelling. He noted that the Zoning By-law does not permit an accessory apartment within linked dwellings.

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

B. O'Carroll asked the applicant how many vehicles' he owns.

K. Yalala replied 1.

B. O'Carroll asked if the basement apartment will be for one tenant.

K. Yalala replied yes.

J. Cardwell asked the applicant if he has prepared drawings for the basement apartment.

K. Yalala replied no.

J. Cardwell asked how access will be provided to the basement apartment.

K. Yalala replied that there will be a new below grade entry created at the rear of the dwelling.

D. McCarroll noted that the driveway may have to be widened to accommodate two parking spaces side by side and that this may impact the minimum required landscape area in the front yard.

K. Yalala noted that he will be able to widen his driveway to accommodate 2 parking spaces side by side and also maintain a landscaped area of approximately 42%.

B. O'Carroll asked if the driveway will be widened towards the front porch (north).

K. Yalala replied yes.

The Chair asked if there were any further 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 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. Cardone introduced himself as the owner of 205 Willowbrook Drive and R. Store introduced himself as the owner of 209 Willowbrook Drive.

S. Cardone advised the Committee that he is concerned with the applicants proposed rear entry to the basement, and that it may affect the foundation of the abutting linked dwellings.

J. Taylor noted that the Province through Bill 108 has directed Municipalities to permit accessory apartments within all ground related dwelling units. The current Zoning By-law does not reflect this directive at this time. The Town is undertaking a Comprehensive Zoning By-law Review and will be incorporating these Provincial directives in the new Zoning By-law.

J. Taylor also noted that with regards to linked dwellings, the link is usually found at the base of the foundation or at the front of the garage slab. He further noted that any entrance feature proposed by the applicant shall be required to comply with the Ontario Building Code.

S. Cardone noted that he is still concerned with possible foundation cracks in the abutting linked dwelling units if the applicants work is done incorrectly.

S. Cardone also stated that the widening of the applicants driveway to accommodate a second vehicle will go against the neighbourhood character.

B. O'Carroll noted that the applicant is permitted as of right to widen their driveway. The widening of the driveway will comply with the Zoning By-law.

J. Taylor noted that the applicant would not be permitted to widen the portion of the driveway within the Town boulevard as there is an existing boulevard tree located on the north side of the existing driveway and a curb cut would be required. However, the applicant would not have any issue widening the driveway on their property if it complies with the Zoning provisions.

B. O'Carroll noted that the driveway already has two vehicles parked on it.

R. Store asked who collected the measurements as shown on the applicant's site plan.

The Chair noted that the applicant prepared the site plan.

J. Taylor noted that the Municipality will review the applicants submitted building permit drawings for compliance with the Zoning By-law and may review as built measurements. If there is any Zoning deficiency the applicant will be required to seek relief from the Zoning By-law or comply by reverting the work that was done.

S. Cardone asked if the property lines will change.

J. Taylor replied no.

R. Store asked the Committee if there is any guarantee that the applicant's basement entry will be restricted to the rear yard.

J. Taylor noted that there is no guarantee.

R. Store asked if the applicant can construct the entrance in the side yard.

J. Taylor replied yes as long as the proposal complies with the Ontario Building Code, however, the side yards are limited and it is unlikely that a side entrance could meet the OBC or Zoning provisions.

P. Dawson asked if the paver stones along the edge of the asphalt driveway count towards the driveway width.

J. Taylor replied yes, if they are able to be parked on.

R. Store asked if the applicant will be required to take more measurements before submitting a building permit.

J. Taylor replied yes. He noted that the applicant will be required to provide a lot more detail on the permit drawings compared to the drawings that were submitted with the Minor Variance application.

R. Store asked who will be responsible if damage were to occur to abutting dwellings resulting from the applicant's activities.

J. Taylor noted that this would become a civil matter.

S. Cardone also noted his concern with noise during the construction process and the enlargement of the basement windows.

J. Cardwell noted that any window enlargement would be dictated by the Building Code.

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

M. Peacock advised the Committee that she is concerned with the widening of the applicants driveway and additional visitor parking that may result from the proposed accessory apartment. She noted that on-street parking is already at capacity and during peak times, driving down the street becomes very difficult.

The applicant asked the Committee if he can withdraw his application and receive a refund in light of the concerns raised by the public.

J. Taylor replied that he may withdraw the application but the fee is non-refundable.

B. O'Carroll noted that the applicant only has one car, which would result in two free parking spaces on the property.

M. Peacock asked if the applicant's garage has to be used for parking.

J. Taylor replied yes. However, he noted that it is difficult for the municipality to enforce who uses their garage for parking.

B. O'Carroll noted that it is not in the Committees role to regulate on-street parking.

R. Store noted that consideration should be given to the residents who have lived in the area for nearly 20 years.

S. Cardone noted that accessory apartments within basements are more feasible in walk out basements.

Moved by: J. Cardwell

That the application to permit an accessory apartment within a linked dwelling having a minimum lot frontage of 9.4m located at 207 Willowbrook Drive be **Granted** subject to the following condition:

1. That the applicant shall widen the existing driveway to a minimum of 5.5m.

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 4: Approval of Previous Minutes

Moved by: B. O'Carroll

That the minutes of the Committee of Adjustment held on Thursday November 28, 2019 be adopted.

Carried

Item 5: Other Business

J. Malfara advised the Committee that the previously tabled Minor Variance Application A/60/19 and A/61/19 are going to be brought back before the Committee for consideration on March 5, 2020.

Item 6: Adjournment

Moved by: B. O'Carroll

That this meeting of the Committee of Adjustment be adjourned.

Carried

[Original approved and signed]

Secretary Treasurer

[Original approved and signed]

Chair