



Minutes of the 11th Meeting of the Committee of Adjustment

Meeting Date: Thursday August 16, 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. 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/51/18

Glen Schnarr & Associates Inc. on behalf of Victoria Street Storage Corp. Victoria Street East

An application has been received from Glen Schnarr & Associates Inc. on behalf of Victoria Street Storage Corp. for variances from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to:

1. increase the maximum permitted building height from 12.0m to 16.2m;
2. reduce the minimum required parking space ratio from 1 space per 100 sq.m of gross floor area to 0.6 spaces per 100 sq.m of gross floor area;
3. reduce the easterly interior side yard setback from 3.0m to 1.0m;
4. increase the maximum permitted two-way driveway width from 10.0 to 14.5m;
5. increase the maximum permitted two-way aisle width serving a loading area from 8.5m to 15.5m; and
6. reduce the minimum number of required loading spaces from 4 to 3 spaces.

The subject property is located at the north west corner of Victoria Street East and Thickson Rd S, and is zoned Special Purpose Commercial – Retail Warehouse Exception 1 (C2-S-RW-1) within Zoning By-law 1784.

In Support of Application

Evan Perlman (Agent)

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.

E. Perlman introduced himself to the Committee as the Planner retained by the owners of the subject property. He expressed that six variances are required to permit the proposed self-storage development which had received Site Plan Approval.

E. Perlman provided an overview of the requested variances, explaining that many of the variances are required due to the fact that the Zoning By-law does not have specific provisions for self-storage facilities.

E. Perlman noted that he reviewed the Planning Staff Report and had no issues with it.

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

B. O'Carroll expressed that she was originally concerned with the driveway entrance configuration, but is now satisfied as the Region of Durham has approved its configuration.

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: J. Cardwell

That the application to (1) increase the maximum permitted building height from 12.0m to 16.2m; (2) reduce the minimum required parking space ratio from 1 space per 100 sq.m of gross floor area to 0.6 spaces per 100 sq.m of gross floor area; (3) reduce the easterly interior side yard setback from 3.0m to 1.0m; (4) increase the maximum permitted two-way driveway width from 10.0 to 14.5m; (5) increase the maximum permitted two-way aisle width serving a loading area from 8.5m to 15.5m; and (6) reduce the minimum number of required loading spaces from 4 to 3 spaces located at Victoria Street East be **Granted** subject to the following conditions:

1. That all Public Works requirements related to Site Plan application SP-07-17 are complied with; and
2. That the Owner obtains the required permit from CLOCA pursuant to Ontario Regulation 42/06.

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 2: Public Hearings

A/52/18

**Michael Finigan
124 Clear Spring Road**

An application has been received from Michael Finigan for variances from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to:

1. operate a home based business in a private garage, whereas a home based business is only permitted to operate within a dwelling unit; and
2. increase the gross floor area occupied by the home based business from 50 sq.m to 58.0 sq.m.

The subject property is located at 124 Clear Spring Road and is zoned First Density Residential (R1) within Zoning By-law 1784.

In Support of Application (in attendance)

Michael Finigan
Denise Branton

In Opposition of Application (in attendance)

Paul Michel
Michael Van Cooten
Brenda Blake
Stephen Blake

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

M. Finigan introduced himself to the Committee as the owner of the subject property as well as the owner of the home based business located at the subject property. He noted that the property was purchased in December 2017 and since purchasing the property, he has carried out renovations to the dwelling which resulted in a large influx of traffic coming to the property during this time.

M. Finigan provided an overview of the requested variances. He stated that variance no. 1 is required to allow his home based business to operate within the garage, and variance no.2 is required to increase the maximum permitted floor area of the home based business.

M. Finigan advised the Committee that in his opinion each of the 4 tests required to approve a Minor Variance are met.

D. Branton introduced herself to the Committee as being in support of the requested variances, and was assisting the applicant in the application process. She expressed

that she is a lawyer, but was not retained to provide legal representation by the applicant.

D. Branton explained that the garage is attached to the house, and if the garage door openings were removed and enclosed, the garage would then become part of the dwelling unit.

M. Finigan advised the Committee that he read the opposition letters provided to him by the Secretary Treasurer in advance of the meeting. He noted that some of the letters referenced group training as advertised on his website. M. Finigan expressed that the website was not updated to reflect his current activities and any group activities that were referenced were conducted outside of the home based business and subject property.

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

D. McCarroll asked the applicant what his hours of operation are.

M. Finigan replied that he operates Monday to Friday between 6:30am and 8:00pm, and operates by appointment only. He offers approximately 3-4 classes per day, and the classes are generally 45 minutes in duration.

S. Haslam asked the applicant if he has any employees.

M. Finigan replied no, but he does employ contract employees for off-site excursions.

J. Cardwell asked the applicant if he is the sole employee at the home based business.

M. Finigan replied yes.

B. O'Carroll asked the applicant if he plans to expand his business.

M. Finigan replied that he has been in the fitness industry for 18 years and the goal of operating a home based business is to support a balanced lifestyle. He has no interest in working late evenings or weekends, and is not interested in expanding his business.

S. Haslam asked the applicant if his 6:30am class is popular among his clients.

M. Finigan replied yes, and he offers 4 classes per week at 6:30am.

S. Haslam asked the applicant if he can shift his 6:30am class to begin at 7:00am, which would allow him to limit any noise impacts.

M. Finigan replied yes, however, at 6:30am his classes are quite and do not cause any noise impacts.

D. Branton replied that Clear Spring Road is a public street and the Noise By-law does not regulate noise produced by vehicles traveling along the roadway.

S. Haslam replied that his concern pertains to impacts created by music.

M. Finigan replied that when music is playing, it can not be heard outside of the building.

The Chair asked the applicant if the property was serviced by a septic system.

M. Finigan replied yes.

The Chair asked the applicant if he consulted with the Durham Region Health Department regarding any additional servicing loads on the septic system.

M. Finigan replied that he consulted with the Durham Region Health Department and a clearance was granted.

D. Branton noted that there is no change room or washroom facilities on the premises.

B. O'Carroll asked the applicant if the parking requirements of the Zoning By-law are maintained.

M. Finigan replied yes.

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

J. Malfara replied yes. A number of support and opposition letters were received from members or the public and clients of M. Finigan. All correspondence was forwarded to the Committee prior to the meeting.

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

P. Michel introduced himself to the Committee as the owner of the vacant lot south east of the applicant's property. He advised the Committee of his objection to the requested variances and recommended that the application be tabled.

P. Michel noted that the proposed variances and the requested use should not be addressed by the Committee of Adjustment, but rather through a Zoning By-law Amendment application.

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

M. Van Cooten introduced himself to the Committee as the owner of 105 Clear Spring Road. He does not support the proposed variances and is concerned with the potential future growth of the applicants business.

M. Van Cooten has no objection with the applicant operating legally within his property/dwelling, but this is not the case as operating a home based business within a garage is specifically not permitted.

M. Van Cooten expressed concerns with traffic. He advised the Committee that if approved, the applicants home based business will generate approximately 49 additional cars traveling along Clear Spring Road per week. If the variance is granted, and an accident occurs due to the increased traffic, will the Town of Whitby assume liability?

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

B. Blake introduced herself to the Committee as the owner of 109 Clear Spring Road. She appreciated the landscaping that was done by the applicant on the property, but, she is not supportive of the variances.

B. Blake advised the Committee that one of her main concerns is traffic. She stated that the subdivision lacks sidewalks, and residents are required to walk on the street. She also noted that additional traffic has already made it more difficult to turn onto Brock Street from Clear Spring Road.

The Chair advised B. Blake that a home based business is a permitted use on the subject property.

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

S. Blake introduced himself to the Committee as the owner of 109 Clear Spring Road. He noted that he has no qualms with the applicant on a personal level, but does not support the variances as it compromises the public well being. He recommended that the Committee deny the variances.

S. Blake expressed that he can not support the variances, ultimately due to the traffic concerns. He advised that other similar sized gyms can generate hundreds of users per day and if the applicant chooses to follow suite, there will be more cars traveling along the street and a greater potential for an accident.

M. Finigan replied and agreed that there are no personal issues between himself and S. Blake. He expressed that his intention is not to become a large commercial gym as referenced by S. Blake. His primary activity includes 1 on 1 private sessions.

D. Branton stated that based on the comments provided by members of the public, traffic is a concern. She noted that there are no provisions in the Zoning By-law to prohibit the home based business use on the property. If a wall is constructed in front of the garage doors, and the garage is converted to be part of the dwelling unit the applicants business would be permitted.

M. Van Cooten asked the applicant why they intend to enlarge the garage if his primary activity pertains to 1 on 1 private sessions.

M. Finigan replied that the garage is not being renovated or enlarged.

Moved by: B. O'Carroll

That the application to (1) operate a home based business in a private garage, whereas a home based business is only permitted to operate within a dwelling unit; and (2) increase the gross floor area occupied by the home based business from 50 sq.m to 58.0 sq.m located at 124 Clear Spring Road be **Granted** subject to the following conditions:

1. That the home based business shall be located within the garage only as illustrated on the applicants Site Plan;
2. That a maximum of 3 persons shall receive instruction/fitness training per class;
3. That the business shall operate only between the hours of 7am and 6pm;
4. That the business shall operate between Monday to Friday

The motion to approve the application subject to the conditions was not carried.

Moved by: D. McCarroll

That the application to (1) operate a home based business in a private garage, whereas a home based business is only permitted to operate within a dwelling unit; and (2) increase the gross floor area occupied by the home based business from 50 sq.m to 58.0 sq.m located at 124 Clear Spring Road be **Denied**.

Carried

Reason: The members of the Committee were of the opinion that the general intent and purpose of the By-law is not maintained, and that the granting of the application would result in an undesirable impact on the community.

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

Item 2: Public Hearings

A/53/18

**Macaulay Shiomi Howson Ltd. on behalf of Urban Intensification Fund
1602 Tricont Avenue**

An application has been received from Macaulay Shiomi Howson Ltd. on behalf of Urban Intensification Fund for variances from the provisions of the Town of Whitby Zoning By-Law 1784.

The application is for permission to:

1. reduce the minimum landscaped area located within the front yard and/or side yards from 10% to 8.7%; and
2. increase the maximum permitted width of a two way aisle serving a loading area from 8.5m to 19.9m.

The subject property is located at 1602 Tricont Avenue and is zoned First Density Residential (R1) in the Town of Whitby Zoning By-law 1784.

In Support of Application

Lorelei Jones

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.

L. Jones introduced herself to the Committee as the Planner retained by the Owners of the subject property. She advised the Committee that she read the Planning Staff Report and agreed with the recommendation and conditions.

L. Jones provided an overview of the requested variances. She expressed that the site will include a total of 14% landscaped area and that the general intent of the Zoning By-law with respect to variance No.1 is maintained.

L. Jones also noted that variance No.2 is required for functionality and the safe movement of tractor trailers within the site.

The Chair asked the applicant what the use of the proposed buildings will be?

L. Jones replied that at this time the buildings will be constructed as “spec-built” buildings.

The Chair asked if there were any questions of 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 reduce the minimum landscaped area located within the front yard and/or side yards from 10% to 8.7%; and to increase the maximum permitted width of a two way aisle serving a loading area from 8.5m to 19.9m located at 1602 Tricont Avenue be **Granted** subject to the following condition:

1. That the applicant adheres to all requirements and conditions of the Site Plan application SP-15-18.

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.

1. That the site grading and all other services conform to the requirements of the Public Works Department; and
2. That 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 2: Public Hearings

A/55/18

Rafael Pimentel
55 Woodward Drive

An application has been received from Rafael Pimentel 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 driveway width from 4.5m to 6.5m.

The subject property is located at 55 Woodward Drive and is zoned Single Family Town House Dwelling (R4B) within the Town of Whitby Zoning By-law 1784.

In Support of Application

Rafael Pimentel
Mitzi Pimentel

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.

R. Pimentel introduced himself to the Committee. He expressed to the Committee that the driveway widening was required to permit an additional parking space within the front yard of the property. He noted that the property includes a single car garage and prior to the driveway widening, a single car driveway.

R. Pimentel also noted that the driveway widening was required to permit a separate parking space for his daughter who also resides at the subject property, as parking on the street is not permitted.

R. Pimentel advised the Committee that when the driveway was repaved and widened, his contractor advised him that the widening complied with the Town of Whitby Zoning By-law.

R. Pimentel expressed that ample landscaped area is still provided within the front yard, and that in his opinion the variance should be approved.

The Chair asked if there were any questions of the Committed.

B. O'Carroll noted that the applicant resides in an end unit townhouse dwelling and because the driveway was widened away from the adjoining townhouse unit, there should be no impact.

B. O'Carroll also noted that there are several other widened driveways, similar in nature located in proximity to the applicants property.

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 a letter of support was submitted by the owner of 51 Woodward Drive and a copy of the letter was forwarded to the Committee prior to the meeting.

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 increase the maximum permitted driveway width from 4.5m to 6.5m located at 55 Woodward Drive 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 3: Approval of Previous Minutes

Moved by: J. Cardwell

That the minutes of the Committee of Adjustment held on Thursday July 26, 2018 be adopted.

Carried

Item 4: Other Business

There were no items raised under other business.

Item 5: Adjournment

Moved by: D. McCarroll

That this meeting of the Committee of Adjustment be adjourned.

Carried

[Original approved and signed]

Secretary Treasurer

[Original approved and signed]

Chair