

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 21, 2024

CASE NO(S).:

OLT-24-000904

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:

B.U. Inc

Subject:

Minor Variance

Description:

To facilitate the addition of 4 bedrooms to an existing detached dwelling unit

Reference Number:

HM/A-24:42

Property Address:

9 Westbourne Rd

Municipality/UT:

Hamilton/Hamilton

OLT Case No.:

OLT-24-000904

OLT Lead Case No.:

OLT-24-000904

OLT Case Name:

B.U. Inc v. Hamilton (City)

Heard:

November 6, 2024 by Video Hearing

APPEARANCES:

Parties

B. U. Inc

City of Hamilton

Counsel

Adriana Pilkington

Peter Krysiak

DECISION DELIVERED BY KEN HEWITT AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

INTRODUCTION

[1] This file relates to an appeal of the City of Hamilton’s Committee of Adjustment (“COA”) decision of a minor variance application to facilitate an additional four bedrooms to an existing detached building that is now 1.5 storeys. The initial application was approved for the conversion of an existing garage to a one-storey, four-bedroom secondary unit. This new application would increase the gross living space from the approved 89 square metres (“sq m”) to 124 sq m of total living space and subsequently increase the number of bedrooms from four to eight in total. The COA denied the minor variance under section 45 of the *Planning Act*, City of Hamilton Zoning By-law No. 6593, as amended 21-020 on July 23, 2024. The COA asserted that this application did not satisfy the four tests and was not minor in nature. B. U. Inc. (“Applicant”) is the owner of the property municipally known as 9 Westbourne Road (“Subject Lands”) located in the City of Hamilton (“City”).

BACKGROUND

[2] The City of Hamilton approved a Zoning By-Law Amendment (“ZBA”) No. 21-020 to amend Zoning By-law No. 6593 to rezone the Subject Lands from C/S-1335, C/S-1335a and C/S-1788 (Urban Protected Residential ETC) to the C/S-1335, C/S-1335a, and C/S-1804 (Urban Protected Residential). This was effected on February 24, 2021.

[3] The purpose of the ZBA was to permit the conversion of the detached garage existing on the site into a Secondary Dwelling Unit (SDU).

[4] The provision behind this ZBA was a building to be constructed to a maximum of 89 sq m with a northerly side yard setback of 0.7 metres (“m”), a rear yard setback of 0.8 m, and one dedicated parking space.

[5] On May 3, 2021, the Applicant applied for a building permit to facilitate the conversion of the existing garage. The submission was for a one-storey detached SDU that would comprise four bedrooms, a washroom, a kitchen, a dining room, and a living space. The permit was issued on February 2, 2022.

[6] On October 2, 2023, the Applicant modified the building permit to include a heated attic with the same roofline. On January 9, 2024, the Applicant applied for another amendment to the permit to include four more bedrooms within the heated attic. This resulted in the change of usable living space and required a minor variance application that was not supported by the COA.

THE HEARING

[7] Adriana Pilkington, Counsel for the Applicant, began by stating that the application was indeed minor in nature and that it does meet the tests as she introduced Mr. Eldon Theodore, a Registered Professional Planner from the Canada Mortgage and Housing Corporation.

[8] Mr. Theodore was affirmed with no objections and was qualified by way of his resume submitted under **Exhibit 1** (Joint Book of Documents). Mr. Theodore did not present at the COA meeting on July 23, 2024. His resume and witness statement are entered within **Exhibit 2**.

[9] Mr. Theodore took the Tribunal through his witness statement, highlighting that the requested variance in his expert opinion met the four tests and is consistent with the Provincial Planning Statement, 2024 ("PPS"). He does not agree that the distinction between 89 sq m is relevant to the change to 124 sq m as it is already a built form, and while the use within the built form may change, the physical characteristics of the building do not change with this application. He went on to state that the surrounding area is consistent with both single and 1.5-storey buildings and that given the location

relevant to the nearby university and the lack of student housing, it would be reasonable to expect more similar applications of this nature.

[10] Mr. Theodore disagreed with the staff report that highlighted to the COA that should the application be supported, a stormwater management plan be submitted. He went on to state that the building was, in fact, already erected and that, again, the internal use of the structure would not change the physical footprint and that the stormwater management would not change as well.

[11] Mr. Theodore argued that the matters of provincial interest were met, referencing that this application was, in fact, gentle intensification and its increase in density was compatible with the surrounding neighbourhood. With respect to the new PPS, he highlighted sections 2.1.4 and 2.1.6, 2.2.1.B and 2.3.1.3, suggesting that the application was an appropriate mix of housing as well as providing a variety of housing ranges. He referenced 2.4.1.4 and 3.2.0.3, recognizing that the location of this application is within walking distance of a major transit system as well as walking distance to the nearby university. Therefore, the need for vehicles would be minimal.

[12] Mr. Theodore continued by stating that section 6.2.5.3 of the City's Secondary Plan is aligned with their application. While this section does recognize limits on over-building, it does encourage the conversion of existing structures to help meet the demands of various housing stock.

[13] Mr. Theodore concludes by stating that, in his professional opinion, this application does meet the four tests of section 45 of the *Planning Act* and is minor in nature. It efficiently uses existing land and resources, including the renovation of an existing residential structure on existing municipal services, to contribute to a range of housing options in the neighbourhood. The development represents the intensification and redevelopment of existing local transit services and connections to the future LRT system within an existing settlement. The application maintains the general intent and

purpose of the City's Secondary Plan, is consistent with the new PPS, and overall, represents good land use planning.

[14] Mr. Peter Krysiak, Counsel for the City, introduced Jennifer Catarino, a Registered Professional Planner employed by the City, as the area planning manager. Her resume and witness statement are included in **Exhibit 3**. Ms. Catarino was affirmed with no objections and submitted that she was in support of the COA decision in rejecting the minor variance application dated July 23, 2025. It was her submission that the application went beyond the original approval of a one-storey, four-bedroom secondary unit, converting an existing garage. Ms. Catarino argued that the new submission does, in fact, change the overall approved 89 sq m to a new requested amount of 124 sq m. Despite the built form, the request for an additional four bedrooms does, in fact, constitute more usable space and, within the definition prescribed with Zoning By-law No. 6593, is more than subtle "overbuilding," and further, it does go beyond minor in nature.

[15] Ms. Catarino stated that the overall addition of eight bedrooms to the existing primary residence, containing eight bedrooms, would, in fact, have a negative impact on the local neighbourhood and does not meet the intentions of the new PPS or the Secondary Plan, and it is not in keeping with good planning practices.

THE FOUR TESTS

- a) The application maintains the general intent and purpose of the Official Plan;
- b) The application maintains the general intent and purpose of the Zoning By-law;
- c) The requested variance is minor in nature; and

- d) The requested variance is desirable for the appropriate development or use of the land, building or structure.

[16] The Tribunal confirms that it has received, reviewed, and considered the following materials and submissions:

- i) **Exhibit 1** – Joint Book of Documents;
- ii) **Exhibit 4** – Closing submissions from Adriana Pilkington;
- iii) **Exhibit 5** – Closing submissions from Peter Krysiak; and
- iv) Resident submissions, including the Participant Statement of Rosemary Lukosius

Conclusion

[17] After a thorough review of all materials, the Tribunal is in agreement with the COA's decision to reject this application and further agrees that the application is not minor in nature and does not meet all four tests under section 45 of the *Planning Act*.

ORDER

[18] **THE TRIBUNAL ORDERS THAT** the appeal is dismissed and the variance to Zoning By-law No. 6593 is not authorized.

"K. Hewitt"

K. HEWITT
MEMBER

Ontario Land Tribunal

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