

ISSUE DATE:

NOV. 15, 2010



PL100786

Ontario
Ontario Municipal Board

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Alejandro Diaz
Subject: Minor Variance
Variance from By-law No.: 2008-250
Property Address/Description: 13 Putman Avenue
Municipality: City of Ottawa
Municipal File No.: D08-02-10/A-00186
OMB Case No.: PL100786
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APPEARANCES:

Parties

Alejandro Diaz

Counsel

A. K. Cohen

Participants

P. McConnell – New Edinburgh Community Alliance

A. Blenkarn on behalf of John and Maurie Barrett

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS
ON NOVEMBER 8, 2010 AND ORDER OF THE BOARD**

The matter before the Board is an appeal by Alejandro Diaz (Applicant/Appellant) of the decision of the City of Ottawa Committee of Adjustment (COA) to deny a minor variance for the property located at 13 Putman Avenue, in the City of Ottawa.

Background

The subject property is zoned “RJ3” which permits single-family and semi-detached homes, duplexes, triplexes, townhouses and link-detached houses. Located behind the property is a high-rise apartment building, with the remainder

of the neighbourhood generally consisting of 2 to 3-storey single detached homes, duplexes, triplexes and townhouses.

The Applicant has self-constructed a 3 ½ storey residential dwelling on the subject property. He contended that his prior lack of construction experience led to certain design and structural changes being required during the building process. These changes had the effect of increasing the overall height of the home, which now exceeds the Zoning By-law standards by approximately 2 ½ feet. In order to legalize the new home, the Applicant requires approval of the following minor variance:

1. to permit a building height of 11.8 metres whereas the maximum height permitted is 11 metres.

This property was the subject of an Ontario Municipal Board hearing in 2007 which approved a severance of the property and authorized related minor variances.

At the commencement of the hearing, Mr. Paul McConnell requested and was granted Participant status on behalf of the New Edinburgh Community Alliance (NECA). Mr. Andy Blenkarn was granted permission to make a presentation on behalf of John and Marie Barrett, who were out of the Country at the time of this hearing.

City planning staff had no objections to the minor variance and the City of Ottawa was not represented at the hearing.

Concerns of the Neighbours

Mr. McConnell submitted that the NECA believes that the subject application fails to meet at least three of the four tests required for the approval of a minor variance. He told the Board that neighbours identified the height and mass of the proposed building as concerns during the severance application hearing in 2007. Mr. McConnell contended that the dwelling is much higher than homes on nearby properties and the additional height requested cannot be considered minor. He submitted that the height and massing of the building is not representative of the established pattern of development on this section of Putman Street, and the increased height will only exacerbate what was already a contentious issue. He contended that granting such a variance “has profound implications for the integrity and relevance of the zoning by-law and its

application”. He submitted that of particular concern “is the way in which non-compliant construction could be justified after-the-fact and approved on the basis of inexperience, design errors, poor advice, failure to monitor and measure, and failure to correct problems once identified”. The NECA believes that the approval of the subject minor variance is “an affront to the City’s established development review and approval procedures and is unfair to those who comply”. Mr. McConnell contended that allowing the variance could “set an unwelcome precedent that weakens application of the zoning by-law”.

Mr. Blenkarn presented a letter on behalf of John and Maurie Barratt who reside at 5 Putman Avenue. The content of this letter generally mirrored the concerns outlined by Mr. McConnell.

Planning Evidence

Mr. Murray Chown is a registered professional planner with more than 30 years experience in government, development industry and consulting sector environments. He is a full Member of the Canadian Institute of Planners.

It was Mr. Chown’s professional opinion that the variance conforms to the intent and purpose of the Official Plan and Zoning By-law, the development is a desirable and appropriate use of the property, and the requested variance is minor in nature.

Mr. Chown provided the Board with a detailed chronology of the construction process/issues which have led to the Applicant’s request for a minor variance related to the height of the constructed home. It is important to note that the Applicant has two options with respect to legalizing the home as currently constructed. The first option involves authorization of a minor variance to permit the increased height. In the alternative, the Applicant could simply increase the grade of the property, avoiding the requirement for a minor variance. The City has approved a requisite grading plan for the property which would bring the height of the building into conformity with the zoning by-law standards. Mr. Chown submitted that as the grading scenario presents other problems, the Applicant has chosen to first seek a minor variance. He informed the Board that the home is constructed of wood and elevating the grade at the rear and side of the property would require the construction of retaining walls. The home has been constructed with an existing rear patio and elevating the grade would have the effect of rendering the patio unusable. Raising the grade at the side of the dwelling would

result in a significant and unsightly retaining wall that would be visible from the street.

Mr. Chown submitted that the property is subject to the *General Urban Area* policies of the OP which permits all types and densities of housing. He opined that the dwelling is compatible with the surrounding neighbourhood and does not result in the creation of adverse impacts to adjacent properties or the neighbourhood as a whole. The Applicant also owns the 2-storey home on the abutting property, which he intends to demolish in order to construct a home of similar architectural design. The highest portion of the subject dwelling has been stepped-back from the front wall of the building, which results in the difference in height being virtually unnoticeable from the street. Mr. Chown submitted that if the minor variance application fails, the Applicant can, and will simply bring the home into conformity with the Zoning By-law by elevating the existing grading. Mr. Chown opined that the minor variance presents a more desirable option than re-grading of the property.

Ms Melanie Knight is the municipal planner who reviewed the subject minor variance application. She appeared under summons by the Applicant.

Ms Knight testified that she supports and concurs with the opinion evidence of Mr. Chown. She confirmed that planning staff have no concerns with the proposed variance. In her opinion, the stepping-back of the upper portion of the building, and the colour scheme and large windows at the front of the home help to mitigate the visual impact of the increased height of the home.

Disposition

The Board accepts and relies on the evidence of Mr. Chown and Ms Knight to find that the proposed variance conforms to the intent and purpose of the Official Plan and Zoning By-law. The increased height of the structure does not result in the creation of adverse impacts and the constructed home is an appropriate and desirable use of the property.

The concerns of neighbours represented by Mr. McConnell and Mr. Blenkarn were largely related to what they considered to be a blatant disregard of the City's Zoning By-law by the Applicant, and the undesirable precedent that would be set by a "retro-active" approval of the development. Mr. McConnell told the Board that the NECA is concerned that a "non-compliant" construction could be approved "after-the-fact". They view such a scenario as unfair, and an affront to

the City's development review process. However, the Board finds no reason to doubt the Applicant's explanation with respect to the circumstances that have led to the constructed home exceeding the height permitted by Zoning By-law No. 2008-250. There can be no argument that the *Planning Act* affords the Owner a right to request relief from the standards set out in the Zoning By-law. While it was evident that some neighbourhood residents have been opposed to the severance and re-development of this property from the beginning, the only matter before this Board is a request to permit an increased building height of approximately 2 ½ feet. The Board must consider the planning merits of the application before it, and cannot be simply expected to render a decision which is punitive in nature. It is worthy of note, that there were several letters from neighbourhood residents in support of this application.

The concern with respect to the setting of a precedent is unfounded as every planning application is considered on its own merits.

In reaching a decision on this application, I have given regard to the provisions of the municipal planning policies and the criteria set out in the *Planning Act*; particularly with respect to the potential for the creation of adverse impact on the neighbours and the neighbourhood resulting from the increased height. In this regard, I find that the variance does not result in any unacceptable degree of adverse impact.

Mr. Chown and Ms Knight testified that the variance would not result in the creation of any adverse impacts. Neither Mr. McConnell nor Mr. Blenkarn addressed specific adverse impact issues during their presentations. The structure has been in place for about a year and there was no evidence before the Board to indicate that the increased height has resulted in the creation of any adverse impacts. In this particular instance, a picture is worth a thousand words. A photo of the constructed home (Exhibit 3a – Tab 6) was very helpful in convincing the Board that an increase of 2 ½ feet in height would not impact either the neighbours or the neighbourhood. I find that the stepping back nature of the upper portion of the building renders it virtually impossible to distinguish any appreciable measure of height deviation and/or adverse impact that could result from permitting the requested relief.

I am satisfied that the variance meets the tests set out in subsection 45(1) of the *Planning Act*.

THE BOARD ORDERS that the appeal is allowed and the variance to Zoning By-law No. 2008-250 is authorized.

The Board so Orders.

"M. A. Sills"

M. A. SILLS
MEMBER