

ISSUE DATE:

April 10, 2012



PL111177

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

Applicant and Appellant: Sophie & Dennis Dimopoulos
Subject: Minor Variance
Variance from By-law No.: 6593
Property Address/Description: 17 Linwood Avenue
Municipality: City of Hamilton
Municipal File No.: A-200/11
OMB Case No.: PL111177
OMB File No.: PL111177

APPEARANCES:

Parties

Sophie & Dennis Dimopoulos

City of Hamilton

Counsel

Michael Minkowski

DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

Introduction

Pursuant to s. 45(12) of the Planning Act (Act), Sophie & Dennis Dimopoulos (Applicants) have appealed a decision of the Committee of Adjustment (Committee) of the City of Hamilton (City) dated October 13, 2011. The Committee refused to authorize a variance to recognize an existing parking space located within the front yard of a single family dwelling. The addition of the parking space has the result of decreasing the front yard landscaped area from a minimum of 50% required under Zoning By-law 6593 (By-law) to 13%. The Applicants appealed the decision and their son in law, Mr. Italiano testified on their behalf, explaining the rationale for the variance. The City opposed the variance and Mr. Barnett, a planner with the City provided expert opinion evidence.

Issues

The issue before the Board is whether a reduction in landscaped area should be authorized by way of a minor variance to provide additional parking beyond what was available on site before the additional area was paved.

Evidence and Findings

The Board may authorize a variance from a by-law if each of the four tests set out in s. 45(1) of the Act are satisfied. In the opinion of Mr. Barnett the variance sought fails to maintain the purpose and general intent of the official plan and zoning by-law, is not desirable or minor in impact. In support of the opinion reached, Mr. Barnett relied on policies set out in the City's official plan and the zoning requirements for the area, explaining that the property is designated Residential and zoned Family Dwelling D. The intent and purpose of requiring a minimum 50% landscaped area is to allow residential lots to provide adequate parking (typically two vehicles) while maintaining a streetscape character of the residential area. The City discourages additional hard surfaces, especially in front of single family homes, and official plan policies put a premium on landscaping to reduce run off in particular and over intensification by way of additional hard surfaces. Linwood Avenue has a three hour parking restriction, however, on street parking permits can be applied for by homeowners on the street.

Mr. Italiano explained that the Applicants require additional parking because four adults live in the home and they have four vehicles. The house is located across from railway tracks and parking adjacent to the tracks (across the street) has been reduced. Mr. Italiano referred to the letter of appeal indicating that there have been break-ins in the area and his parents in law are fearful of leaving vehicles parked on the street. The Applicants want to ensure that their vehicles are secured and located on their property. Mr. Italiano was very fair in his evidence acknowledging that he was unaware that on street parking permits were available (by application). However, on street parking close to the house is limited given the configuration of Linwood. As well, vehicles often use the side streets in the area to go around traffic on main streets, and a blind corner at Stanley Avenue and Linwood means that drivers may not see parked vehicles. This is especially true at night given the absence of a street

lamp beside the railway tracks, close to the intersection. Mr. Italiano was reasonable in his approach and did indicate that the City's proposal showing a configuration that would permit at least three vehicles to park on the site (Exhibit 1, Tab 24) is a solution that the Applicant's would consider to restore a portion of the original landscaping to the front yard.

While the Applicants would prefer to always have four vehicles parked on their property, the Board finds that the variance to reduce the landscaped front yard area from 50% to 13% is not minor or desirable in the context of the tests set out under s. 45(1) of the Act. The original proportion of paved area to landscape provided parking for at least two cars. There is car port, drive way and adjacent paved area. Landscaping was removed which resulted in pavement on the both sides of the front yard. It is this additional paving that triggered the need for a variance. In light of the City's objectives to maintain a balance between hard and soft surface, a variance from 50% to 13% is too large a reduction in landscaped area. Moreover, there are options available to the Applicants to accommodate additional vehicles. They can apply for an on street parking permit. They can also reconfigure the front yard in accordance with the potential parking scheme prepared by staff, which depicts parking for three vehicles. For these reasons, the variance sought from the By-law cannot, in these circumstances, be authorized and the planning opinion of Mr. Barnett is adopted and relied upon by the Board.

Decision and Order

For all of the reasons given, the Board finds that the variance fails to satisfy the four tests set out in s. 45(1) of the Act. In arriving at this decision, there has been regard to matters of provincial interest, as required under s. 2 of the Act. The decision is consistent with applicable policy statements and conforms with provincial plans, as required under ss. 3(5)(a) and (b) of the Act.

The appeal is dismissed and the variance to reduce the amount of front yard landscape area is not authorized.

So orders the Board.

“J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR