

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 6, 2015

CASE NO(S): PL140490

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

Applicant and Appellant:	Eldon Spinney
Subject:	Minor Variance
Variance from By-law No.:	3581-86, (Dundas) City of Hamilton
Property Address/Description:	93 Head Street
Municipality:	City of Hamilton
Municipal File No.:	A-50/14
OMB Case No.:	PL140490
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Heard: October 27, 2014 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Eldon Spinney

Sabrina Seibel*

Danuta Niton

Self-represented

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

[1] Eldon Spinney applied to the City of Hamilton (the "City") for minor variances to permit the construction of a 32.0-square metre attached garage/carport to the existing single detached dwelling for his property at 93 Head Street. The City Committee of Adjustment (the "COA") denied the variance request which lead to this appeal. Danuta Niton, the neighbour who lives at the adjacent property at 95 Head Street, requested and was granted party status. She is opposed to the requested application.

[2] The Applicant called other neighbours as lay witnesses to support his position. There were no expert witnesses to provide land use planning evidence.

REQUESTED VARIANCE

[3] The following variance relief was requested from Zoning By-law No. 3581-86.

A minimum easterly side yard of 0.6 m, with further eaves projection, shall be provided instead of the minimum required 3.0 m.

[4] The COA denied the variance for the following reasons:

1. The Committee, having performed a site inspection of the subject property and surrounding neighbourhood, is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in s. 45 of the *Planning Act*, 1990.
3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

ISSUE

[5] Section 45(1) of the *Planning Act* allows the Board to authorize variances to a zoning by-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the official plan; and maintains the general intent and purpose of the zoning by-law. The Board must be satisfied that all four tests are met in order to authorize the requested variances.

EVIDENCE

[6] Mr. Spinney described the proposal. He said that he wishes to construct an attached carport to protect his antique cars from the elements. He has an existing large garage (12 feet ("ft") by 38 ft) that is located to the rear of his property along his south property line. The carport is proposed to be separated from the garage by about four feet, and would be in line with it. The side yard setback is measured from the posts of the carport. Mr. Spinney said that the variance relief is required because there is not enough room to drive a car through the carport to the garage behind without the relief.

[7] Mr. Spinney said that he uses his large garage to store his cars and motorcycle. He said he has four cars and that the garage is not large enough for the vehicles. The carport is to protect the vehicles when he moves them in and out of the garage.

[8] Mr. Spinney testified that he initially had the support of his next door neighbour Ms. Niton, and a number of nearby neighbours. Mr. Spinney said that the Planning Department recommended that the variance be approved, however when the item came up at the COA meeting of March 20, 2014, Ms. Niton was opposed due to her concern about the impact to her home, particularly the blocking of sunlight to her north facing kitchen window. As a result, the matter was deferred for the committee members to conduct a site visit. The application was denied at the subsequent COA meeting for the reasons given above.

[9] Mr. Spinney testified that he has subsequently modified the design of the carport from the original design where the carport would be 16 ft in height, designed as a cottage style roof with eaves. The design now features a sloping roof to minimize the impact to the neighbour, Ms. Niton. This modified design was provided in Exhibit 1, Tab J. It does not change the setback requirement. The design shows that the overhang from the carport roof to be coincident with the property line between the Applicant's lands and Ms. Niton's property.

[10] The Applicant provided a number of photographs to show the context of the site and the neighbourhood. He also testified that there are a number of carports in the neighbourhood, and provided photographs of these.

[11] Brad Robinson was called as a witness by the Applicant. He lives at 91 Head Street. He has a construction company, and he put the design together for the application for the variance. He said that the original design included a higher roof to match the pitch of the house, and included a decorative gable at the front to improve curb appeal. That design had a maximum roof height of 16 ft. Mr. Robinson said that he subsequently modified the carport design to respond to Ms. Niton's concerns that the structure would impact her view and sunlight from the north window of her home. On the modified design (as provided in Tab J) the height of the roof where it meets the house is about 15 ft, and then it slopes downward toward Ms. Niton's property. The overhang of this structure extends to the property line between the two properties. Upon questioning by the Board, Mr. Robinson said that the overhang could be shortened so that the eaves were on the Applicant's property.

[12] Jacqueline Ward, who lives across the street at 94 Head Street, testified that she is in favour of Mr. Spinney's proposal, as in her view, it looks pleasing, and it will improve the neighbourhood as well as increase property values. Michele Mead, who lives at 97 Head Street, on the other side of Ms. Niton, testified that she is in favour as well, as she also believes that the carport on Mr. Spinney's property will increase the property values for all residents on the street. She acknowledged that she would not be directly impacted by this application.

[13] The Applicant and some of the residents characterized the area as partially residential and partially commercial. The official plan designation is "Neighbourhoods" in the Urban Hamilton Official Plan and the subject property is zoned Single Detached Residential "R2" Zone in the Town of Dundas Zoning By-law.

[14] Ms. Niton testified as to her concerns regarding the application. Her property is adjacent to the Applicant's south property line. She is concerned that the carport would impact her view from her kitchen window, and that it would be an imposing large wall composed of the existing fence topped by the roof of the carport. She said that she works from home and spends a great deal of time at the kitchen window. She said that the Applicant's garage is already long and is located along that same property line.

[15] She is concerned about drainage coming onto her property from the roof of the carport, both from rain and snow.

[16] She testified that the COA members undertook a site inspection and came to the conclusion that the application and variance requested were not minor, not consistent with the official plan and zoning by-law and not appropriate because of the intensity of development on the lands.

[17] She said that the neighbourhood is characterized by small homes and families with children. It is quiet, with low traffic and is a relatively isolated area. The street is a crescent so there is no through traffic. She said some of the homes have small garages. She provided photographic evidence to support her description of the area.

[18] Ms. Niton provided photographs from her property showing the length of the garage, as well as the proposed location of the carport. She contends that Mr. Spinney did not get proper authorization for the addition to the back of his garage, and that there are locations where the garage is within one foot of her property line. The photographs show a temporary carport structure at the proposed carport location.

[19] Ms. Niton testified that she believes that Mr. Spinney's property is already inconsistent with the neighbourhood. She said no additional development is appropriate for this land as the property is overbuilt, the garage is oversized, and is already too close to the property line. She also complains of Mr. Spinney parking his large commercial

vehicle both in his driveway and on the street. She contends that it should be parked elsewhere, such as at a storage facility.

ANALYSIS AND FINDINGS

[20] As described earlier, the Board is required to determine whether the variance sought meets the four tests of the *Planning Act*, and if it fails any one of the tests, it cannot be authorized. The Board has carefully reviewed the lay evidence provided during the hearing.

[21] The variance is required to maintain the intent and purpose of the official plan, which is that development be “compatible” with the surrounding neighbourhood. In this instance, the Board did not hear evidence to indicate how this proposal maintains compatibility between the proposed development on the subject property and the surrounding neighbourhood. The photographs that were provided in evidence show a neighbourhood of modest sized homes. Where there are carports or garages, they are modestly sized, as one storey carport structures or small detached garages. This proposal will result in a significant amount of garage type structures on a single residential lot. The Board did not hear evidence regarding how this would be a compatible development on the lot.

[22] The lands already host a large rear garage and the Board finds that the proposal for a carport will result in over intensification of garage space. Notwithstanding the recommendation of the planning staff, the Board finds that this proposal is not desirable for the appropriate development of the land.

[23] The Board finds that the requested variance is not minor, as it permits a large amount of garage type buildings on a residential property. There is insufficient planning justification to permit this variance. The adjacent neighbour will perceive a long expanse of structure along the property line, which is not the expectation in a residential neighbourhood. The plans submitted indicate that the overhang of the carport roof is

coincident with the shared lot line. The Board did not hear sufficient evidence to be persuaded that there will be no impact due to drainage onto the neighbouring property.

[24] In this instance, the Board finds that the variance required to construct the attached carport, as described in this hearing, is not supported with sufficient evidence for the Board to find that the proposal meets the required tests. The Applicant has the right to re-develop his property, but should do so within the confines of the by-law.

[25] On the basis of the above reasons, the Board finds that the proposal does not meet the general intent and purpose of the Town official plan or the zoning by-law, it is not a desirable and appropriate development of the land, and it is not minor in nature.

ORDER

[26] The Board orders the appeal is dismissed. The requested variance is not authorized.

"H. Jackson"

H. JACKSON
MEMBER

Ontario Municipal Board

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