

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 31, 2015

CASE NO(S): PL150326

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

Appellant:	Carlo Montemurro
Applicant:	John Wittmann
Subject:	Minor Variance
Variance from By-law No.:	79-200
Property Address/Description:	6112 Carlton Avenue
Municipality:	City of Niagara Falls
Municipal File No.:	A-2015-012
OMB Case No.:	PL150326
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OMB Case Name:	Montemurro v. Niagara Falls (City)

Heard: July 22, 2015 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel

John Wittmann

Brent Harasym

City of Niagara Falls

Ken Beaman

Carlo Montemurro

Self-represented

DECISION DELIVERED BY RICHARD JONES AND BLAIR S. TAYLOR AND ORDER OF THE BOARD

BACKGROUND

[1] John Wittmann (“Applicant”) made application to the City of Niagara Falls (the “City”) Committee of Adjustment (“COA”) to build an addition to an existing detached garage located in the rear yard of his residence at 6112 Carlton Avenue (the “Subject Lands”).

[2] The addition consists of 176.5 square metres and would be constructed in-line with the existing garage, which is 111.5 square metres in size. Zoning By-law No. 79-2000 (“ZBL”) permits a maximum floor area of 93 square metres for accessory structures. The existing garage, plus the addition would provide a total of 288 square metres (The variance consists of 195 square metres). A height variance of 0.05 metres is also incurred as an accessory structure that must have a maximum wall height of 3 metres and the garage would have a wall height of 3.05 metres.

[3] Carlo Montemurro (“Appellant”), a nearby neighbour appealed the COA’s decision to approve the variances. Mr. Montemurro, the Appellant, was self-represented at the hearing session.

[4] The Subject Lands are located on the west side of Carlton Avenue and comprise a lot area much larger than the neighbouring properties, perhaps 2.5 to 3 times larger than the average according to testimony. The existing garage is tucked in behind the dwelling on the Subject Lands, a situation which effectively mitigates visible evidence of the building from Carlton Avenue according to the photo and site plan exhibits. This decision also notes that no other residents along Carlton Avenue opposed the application at this hearing.

[5] The purpose of the extended garage is to allow for the storage of automobiles, which Mr. Wittmann collects and improves with the assistance of his friends. Another area of the garage will be used to house exercise/rehabilitation equipment relating to injuries the Applicant received in the past. The Applicant testified that no paintwork or extensive repairs are carried out or will be in the future. The principle activity is

apparently for storage of valuable and valued automobiles. The Applicant has owned the property since 1986, and the garage has existed since 1997.

EVIDENCE

[6] We heard from Ken Mech, Manager of Current Planning for the City, who was qualified to provide professional planning opinion. Mr. Mech had recommended the application to the COA.

[7] With respect to the four tests pursuant to s. 45(1) of the *Planning Act*, Mr. Mech opined that the application meets general intent and purpose of the Official Plan ("OP") because accessory structures are common in residential areas and further, that the proposed garage addition is proportional to the size of the property and effectively hidden from public view.

[8] With regard to test two, meeting the general intent and purpose of the ZBL, Mr. Mech testified that the height variation was minimal, and that the By-law setback standard for accessory buildings was generous at 1.8 metres which provided the opportunity for fencing and planting along the south boundary line to further mitigate impact. He added that the large size of the lot again promoted the value of proportionality when considering the size of the addition in consideration of the large lot size. The ZBL did not have standards pertinent to accessory buildings until 2008.

[9] The planner was of the opinion that the variances were desirable for the appropriate development or use of the land because the addition would also allow the Applicant to accommodate his rehabilitation equipment and the relative invisibility of the garage entailed a certain degree of compatibility with regard to adjoining and nearby properties.

[10] Mr. Mech further advised the Board that the variances were minor and would not negatively impact the neighbourhood.

[11] Mr. Wittmann testified that the garage addition would only store his vehicles, and no work would be carried out above and beyond incidental maintenance. No paint work or body work would be done as all of this would be accomplished by outside auto body commercial operators. His cars were his hobby said his friend, Terry Dunseith.

[12] The Appellant told the Board that the expanded garage could assume characteristics of a commercial operation which he opposed in a residential area. He believed that there was more neighbourhood opposition to the variances than had been revealed but other residents are reluctant to express it. He further stated that the commercialization of the expanded garage would lead to other commercial intrusions into the neighbourhood.

FINDINGS

[13] On the matter of the height variance, the Board is not concerned that such a minor difference would have a material impact.

[14] With respect to the area variance, the Board concurs with the uncontroverted planning evidence that the four tests of the *Planning Act* are met by the application principally because the addition is relatively invisible from the public realm and does constitute a reasonable expansion considering comparatively-speaking, the large size of the lot. In this regard, the Board agrees that proportionality contributes to the notion that the size variance is minor and does not convey a negative impact on the adjoining householders much less the broader neighbourhood.

[15] Thus, the Board finds that the requested variances both individually and cumulatively satisfy the four tests of s. 45(1) of the *Planning Act*.

[16] However, although we find that the expanded garage may have a passive use as a hobby for the current owner, the Board is also mindful that the Subject Lands in the future could be sold and the use of the garage could also change.

[17] Accordingly, the Board will impose a condition of approval in consideration of that apprehension.

ORDER

[18] The Board orders that the variances are authorized with the following condition:

- that the use of the garage will only be for the storage of the Applicant's personal vehicles and exercise/rehabilitation equipment.

"Richard Jones"

RICHARD JONES
MEMBER

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

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Ontario Municipal Board

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