

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 17, 2018

CASE NO(S): PL170711

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

Appellant:	Stephen Malgo
Applicant:	Andrew Doerr
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	296 East 31st Street
Municipality:	City of Hamilton
Municipal File No.:	A-17/74
OMB Case No.:	PL170711
OMB File No.:	PL170711
OMB Case Name:	Malgo v. Hamilton (City)

Heard: November 28, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Representative

Stephen Malgo

Self-represented

Andrew Doerr

Self-represented

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision regarding an appeal brought by Stephen Malgo (the “Appellant”) of the approval by the City of Hamilton (the “City”) Committee of Adjustment (the “Committee of Adjustment”) of an application for minor variances to the City’s

Zoning By-law No. 6593 (the “Zoning By-law”) regarding the required floor area for a proposed second dwelling unit and regarding proposed alterations to the exterior of the house located at 296 East 31st Street (the “subject property”).

[2] The subject property is owned by Andrew Doerr (the “Applicant”). He proposes to convert the existing dwelling there from a single detached dwelling to one containing two dwelling units. On February 27, 2017, he applied to the Committee of Adjustment seeking the required variances and on April 20, 2017, the Committee of Adjustment approved his application.

[3] On May 9, 2017, the Appellant appealed the Committee of Adjustment’s decision. He owns a home near the subject property.

REQUESTED VARIANCE

[4] The Applicant seeks variances to the Zoning By-law reducing the minimum floor area of a dwelling unit in a converted dwelling from 65 square metres (“sq m”) to 54 sq m and altering the external appearance of the dwelling.

ISSUE

[5] The issue in this appeal is whether or not the proposed variances meet the four tests under s. 45(1) of the *Planning Act*. More specifically, do the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan (the “Official Plan”), do they maintain the general purpose and intent of the Zoning By-law, are they desirable for the appropriate use of the subject property, and are they minor?

EVIDENCE

Applicant's Evidence

[6] The Board heard opinion evidence from Kennedy Self on the behalf of the Applicant. He was qualified by the Board to give opinion evidence as a Professional Planner.

[7] Mr. Self stated that the dwelling on the subject property is a single detached dwelling, which is similar to many other dwellings in the area. He said the Applicant wishes to convert much of the basement into a second dwelling unit. He described the Applicant's plans, including the addition of two basement windows to the rear of the building, and he outlined the available floor space for the proposed second unit.

[8] Mr. Self testified that the proposed variances maintain the general purpose and intent of the Official Plan. He said that the area in which the subject property is located is designated as "Neighbourhoods" under the Official Plan and allows for the conversion of single dwellings into two-unit dwellings. He said the Official Plan states that residential intensification, such as this, is a key component of the City's growth strategy and contributes to creating and maintaining vibrant neighbourhoods and a wider range of housing types. He said intensification is defined in the Official Plan to include the conversion of residential dwellings to allow for second units. He said intensification should maintain, enhance and build upon desirable established patterns and built form and maintain and achieve a range of dwelling types and tenures. He said the Official Plan promotes residential intensification of "appropriate scale and in appropriate locations" in Neighbourhoods. He stated that intensification should be compatible with the built form and character of the surrounding neighbourhood, which he opined the proposed variances would permit at the subject property. He said there are no minimum standards for second dwelling unit floor area in the Official Plan and the proposed changes to the exterior of the dwelling would keep it compatible with other dwellings in the area.

[9] He also testified that the proposed variances maintain the general purpose and intent of the Zoning By-law. Mr. Self stated that the subject property is zoned "Urban Protected Residential", which permits second dwelling units. Section 19(1) of the Zoning By-law stipulates that single detached dwellings may be converted into two-unit dwellings provided that each dwelling unit has a floor area of at least 65 sq m and the external appearance and character of the dwelling is preserved. Regarding the floor space variance, Mr. Self testified that some other Ontario municipalities have minimum floor space requirements for second dwelling units that are less restrictive than those in the Zoning By-law and there are no reasons for these more restrictive requirements here. Regarding the exterior appearance variance, he said the changes would not be noticeable from the street and would not impact the streetscape.

[10] He stated that the City Planning Department's report for this matter supported the proposed exterior appearance variance, but did not support the proposed reduced floor area variance. He noted that the Planning staff stated that the proposed floor area variance does not maintain the general intent and purpose of the Zoning By-law as the proposed second unit would not provide an adequate amount of living space. The report did not provide detailed rationale on why the proposed floor space was not an adequate amount of living space.

[11] Mr. Self opined that the proposed variances are desirable for the appropriate use of the property. He stated that the addition of two windows to the rear of the dwelling will not impact its appearance from the street and that the requested floor area variance will not impact the character of the neighbourhood.

[12] Mr. Self opined that the proposed variances are minor. He said the proposed variances would not result in adverse impacts to neighbours. He said the proposed additional windows will not be seen from the street and the second unit would be self-contained.

[13] Mr. Self opined that the proposed variances are consistent with the Provincial Policy Statement, 2014 (the "PPS") and conform to the Growth Plan for the Greater

Golden Horseshoe, 2017 (the “Growth Plan”), both of which encourage residential intensification.

[14] Mr. Self stated that the proposed variances represent good planning and are in the public interest. He stated that the proposed variances were circulated to the City’s Transportation Department, which did not have any comments. Mr. Self opined that no conditions are needed.

[15] The Applicant gave fact evidence. He described his plans to build a second unit and stated that his proposed renovations would meet Building Code requirements. He said the proposed additional windows would face the rear yard and a fence. He stated that he intends to renovate the dwelling to a high standard and he described the types of tenants he hopes to attract. He said he plans to do landscaping to improve the appearance of the dwelling from the street and that an additional onsite parking space would be built on part of the front yard.

Appellant’s Evidence

[16] The Appellant gave fact evidence. He said the addition of a second dwelling unit would result in parking and traffic issues. He said that the Official Plan states that traffic and other nuisance effects must be evaluated when considering an application for residential intensification in a Neighbourhoods area. He also said the conversion of the basement into a second unit may result in health and fire safety problems. He also said the Applicant will need to widen the driveway on the subject property resulting in a loss of green space. He said that area residents had signed a petition opposing the proposed variances and that several residents wrote letters to the Committee of Adjustment in opposition to them.

[17] Margaret Rich provided fact evidence on behalf of the Appellant. She lives close to the subject property. She stated that the Official Plan encourages affordable housing, but that the proposed conversion will likely result in a relatively expensive rental unit, not an affordable one. She said properties with second units are often not

well maintained and that if the Applicant's proposed conversion is allowed, it will set a precedent facilitating other conversions on the street. She expressed concerns that students will rent units on the street and that the character of the neighbourhood would change. She noted that a child recently died in a basement fire in the City and she expressed concerns regarding the safety of basement units. She also expressed frustration with the rise in housing prices in the City.

ANALYSIS AND FINDINGS

[18] After having considered the evidence, the Board accepts and agrees with the uncontradicted opinion evidence provided by Mr. Self on behalf of the Applicant.

[19] The Board finds that the proposed variances maintain the general purpose and intent of the Official Plan. The Official Plan aims to facilitate residential intensification that is compatible with the existing character of neighbourhoods and permits second dwelling units in the area. Based on the evidence before the Board, the proposed variances will facilitate the creation of a second dwelling unit at the subject property, permitting residential intensification that maintains the existing character of the neighbourhood. This aligns with the general purpose and intent of the Official Plan.

[20] The Board finds that the proposed variances also maintain the general purpose and intent of the Zoning By-law. Regarding the requirement that each dwelling unit have a floor space of at least 65 sq m, the Board finds that although it would be small in size, there were no persuasive grounds provided to the Board upon which it can make a finding that the requested reduction in floor space is a sufficient reason to hinder the Official Plan's objectives of facilitating residential intensification. The Applicant provided evidence that at least one other municipality permits second units with lesser floor areas than what is proposed here. Although the Planning staff's report stated that the proposed second unit would not provide an adequate amount of living space, the Board was not presented with any persuasive evidence as to why a 54 sq m dwelling unit is too small. The Board notes that the Applicant testified that the second unit would meet building code safety standards.

[21] Regarding the By-law's requirement for the preservation of the external appearance and character of the dwelling, the Board finds that the addition of basement windows at the rear of the building will not impact the appearance of the dwelling from the street and will not generally impact the character of the building.

[22] The Board also finds that the proposed variances are desirable for the appropriate use of the subject property. The Board finds that neither of the proposed variances will change the character of the street or the neighbourhood.

[23] The Board further finds that the proposed variances are minor. The Board finds that there was insufficient evidence before it of adverse impacts that might be caused by the proposed variances. The Board finds that the proposed additional windows will not have privacy impacts on neighbourhoods and there was insufficient evidence before the Board to demonstrate that there would be significant parking, traffic safety, green space or noise impacts caused by the addition of a dwelling unit in the neighbourhood. Regarding the possibility that the addition of a dwelling unit will create a precedent, the Board notes that each case must be assessed on its own individual merits. The evidence and circumstances in any possible future variance application will be distinct from those in this case.

[24] Based upon the evidence before it, the Board agrees with the expert opinion evidence of Mr. Self and finds that the proposed variances meet the tests under s. 45(1) of the *Planning Act*, are consistent with the PPS and conform with the Growth Plan. The Board dismisses the appeal and authorizes the proposed variances.

ORDER

[25] The Board orders that the appeal is dismissed and the proposed variances to the Zoning By-law reducing the minimum required floor area of the proposed basement dwelling unit from 65 sq m to 54 sq m and altering the external appearance of the

dwelling with the addition of windows are authorized.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248