

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 22, 2018

CASE NO(S): PL180107

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Michael & Susan Rahija
Subject:	Minor Variance
Variance from By-law No.:	05-200
Property Address/Description:	2301 Kirk Road
Municipality:	City of Hamilton
Municipal File No.:	A-368/17
OMB Case No.:	PL180107
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OMB Case Name:	Rhija v Hamilton (City)

Heard: June 14, 2018 in Dundas, Ontario

APPEARANCES:

Parties

Representative

Michael and Susan Rahija

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
JUNE 14, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] Michael and Susan Rahija applied to the City of Hamilton ("City") Committee of Adjustment for a minor variance to the City's Zoning By-law No. 05-200 ("Zoning By-law")

to facilitate the construction of a one-storey pole barn accessory to their existing single detached dwelling located at 2301 Kirk Road (the “subject property”).

[2] The Rahijas seek the following variance to the Zoning By-law permitting:

- a maximum gross floor area of 259.0 square metres (m²) for all buildings accessory to the single detached dwelling on the subject property instead of the requirement in the Zoning By-law that all buildings accessory to a single detached dwelling shall not exceed an area of 120.0 m².

[3] On November 2, 2017, the Committee of Adjustment denied the application and on November 15, 2017, the Rahijas appealed the Committee of Adjustment’s decision to the Tribunal.

[4] At the hearing on June 14, 2018, the appeal was unopposed. Only the Rahijas attended the hearing before the Tribunal.

SUBMISSIONS AND FINDINGS

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

[6] At the hearing, Mr. Rahija described the proposed accessory building. He said an existing 100 m² pole barn would be torn down and replaced with one that is 222.96 m² and that another separate existing 36 m² accessory building would be retained (resulting in the request for the approval of 259 m² of accessory building floor space). He said that all other zoning requirements will be met. He then described the surrounding agricultural area, which contains large lots and vacant farmland.

[7] Mr. Rahija reviewed the City's staff report, dated November 2, 2017 (Exhibit 1), regarding the variance application. The staff report reviews the applicable provisions in the Provincial Policy Statement, 2014 ("PPS"), Greenbelt Plan, Official Plan, and Zoning By-law. It states that the minor variance application is consistent with the PPS policies that manage growth and regeneration within rural areas. It also states that the single detached dwelling on the subject property is a permitted existing use within the Greenbelt Plan's Protected Countryside area. The report states that the subject property is designated as Agriculture in Schedule D – Rural Land Use Designations in the Official Plan, which permits existing dwellings, such as the dwelling on the subject property. The staff report also notes that the subject property is zoned Agriculture (A1) under the Zoning By-law.

[8] The staff report states that the proposed pole barn would be in character with the neighbourhood and its impacts on neighbouring properties would be minimal. The report concluded that the proposed variance is minor and appropriate for the development of the subject property. It recommends that the proposed variance should be approved.

[9] Mr. Rahija also reviewed correspondence from the Niagara Peninsula Conservation Authority, dated March 15, 2017 (also in Exhibit 1), stating that the site of the proposed accessory building is not within lands regulated by the Conservation Authority and that the Conservation Authority does not object to the proposed development.

[10] Mr. Rahija stated that the proposed accessory building will meet the other performance standards in the Zoning By-law, including height and setback requirements, will not be openly visible from neighbouring homes, is compatible with other accessory buildings in the area, and will not have any privacy or shadowing impacts on neighbouring properties. Mr. Rahija stated that no neighbours or other members of the public have objected to the proposed variance.

[11] Based on the materials before it, including the City staff report recommending approval of the variance, the Tribunal found that the proposed variance meets the four tests in s. 45(1) of the Act. The Tribunal found that a dwelling with accessory buildings is permitted on the subject property under the Official Plan and the variance will facilitate a

use that is compatible with similar uses in the area. With the variance, the proposed development will meet all the zoning regulations in the Zoning By-law and will maintain the general purpose and intent of the Zoning By-law. The variance will facilitate the construction of a storage building which is an appropriate use of the subject property, and it will not likely have significant adverse impacts on neighbouring properties and is minor.

[12] The Tribunal allowed the appeal and authorized the proposed variance.

ORDER

[13] The Tribunal orders that the appeal is allowed and that the following variance to the Zoning By-law is authorized:

- a maximum gross floor area of 259.0 m² for all buildings accessory to the single detached dwelling on the subject property instead of the requirement in the Zoning By-law that all buildings accessory to a single detached dwelling shall not exceed an area of 120.0 m².

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

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Local Planning Appeal Tribunal

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