

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



ISSUE DATE: April 30, 2019

CASE NO(S): PL180858

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

Appellant:	Niagara Escarpment Commission
Applicant:	467 Charlton Avenue Inc. c/o Ron VanKleef
Subject:	Minor Variance
Variance from By-law No.:	Zoning By-law No. 6593
Property Address/Description:	467 Charleston Ave. E.
Municipality:	City of Hamilton
Municipal File No.:	A-224/18
LPAT Case No.:	PL180858
LPAT File No.:	PL180858
LPAT Case Name:	Niagara Escarpment Commission v. Hamilton (City)

Heard: April 16, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

467 Charlton Avenue Inc.

A. Toumanians

Niagara Escarpment Commission

S. Zhai

**MEMORANDUM OF ORAL DECISION DELIVERED BY L.M. BRUCE ON APRIL
16, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] 467 Charlton Avenue Inc. (“Applicant”) applied to the City of Hamilton (the “City”) Committee of Adjustment (“CoA”) for relief from the requirements of Zoning By-law No. 6593 as amended (the “ZBL”) for variances which would permit the construction of an additional floor on a five-storey residential building and would address parking deficiencies.

[2] The variances were approved by the CoA but subsequently appealed by the Niagara Escarpment Commission (“NEC”).

[3] The development consists of three buildings with a total of 162 dwelling units. Buildings A and B are six storeys and Building C was approved as a five-storey building. This development was the subject of a previous OMB hearing (PL141231) in which Official Plan and Zoning by-law amendments were granted for the three building development.

[4] Since this time the Applicant has started construction on Buildings A and B. A number of deficiencies relative to the applicable ZBL were identified: parking ratios, location of parking spaces, planting strips and setbacks. In addition, the Applicant has modified the footprint of the buildings and has sought approval for a sixth storey on Building C (Block 1C).

[5] 467 Charlton Avenue East (the “subject property”), is located in the south end of the Stinson Neighbourhood in the City of Hamilton. The subject lands are located on the north side of Charlton Avenue East between Wentworth Street South and Victoria Street South.

[6] The parcel is elongated with 377 metres of frontage on Charlton Avenue East and is situated on a level plateau half way between the brow and toe of the Niagara Escarpment.

[7] The variances included in this decision have been modified as part of a settlement between the NEC and the Applicant. The Tribunal finds that in accordance with section 45.18.1.1 of the Planning Act (the "Act") these changes are minor and no further notice is required. The variances are:

1. A maximum building height of six (6) storeys above grade or 21.0 m in height shall be permitted for a building or structure within Block 1c, excluding the mechanical penthouse whereas the ZBL permits a maximum building height of five (5) storeys above grade or 18.0m in height, excluding the mechanical penthouse and is subject to the following:
 - a) The mechanical level on top of the building within Block 1c does not exceed a height of 3.3 metres above the top of the lower roof of the subject building;
 - b) The mechanical level on top of the building within Block 1c shall be set back a minimum of: 3.5 metres from the south wall of the building's lower roof, 16 metres from the west wall of the building's lower roof, 5 metres from the north wall of the building's lower roof, and 16 metres from the east wall of the building's lower roof; and
 - c) The height of the 6-storey building shall be measured in relation to a curb level elevation (for the purpose of determining height according to Zoning By-Law 6593) not exceeding 115 metres above sea level.
2. The minimum number of parking spaces for visitors shall be based on 0.10 spaces for dwelling units greater than 50.0 square metres (sq m) in gross floor area instead of the minimum 0.2 spaces for dwelling units greater than 50.0 sq. m required for visitor parking;
3. The boundary of the easterly parking area containing five (5) or more parking spaces shall be permitted to be located as close as 0.8 m from the adjoining easterly residential instead of the minimum 1.5 m setback required from a residential district for a parking area containing five (5) or more parking spaces;
4. A planting strip having a minimum width of 0.8 m shall be provided between the parking area containing five (5) or more parking spaces and the easterly residential district instead of the minimum 1.5 m wide planting strip required between a parking area containing five (5) or more parking spaces and an adjoining residential district; and
5. A minimum front yard of 0.4 m shall be permitted to a canopy for a building entrance for Building "B" instead of the minimum 1.4 m front yard required.

[8] While there were five variances sought from the Tribunal the concerns raised by the NEC were limited to the visual impact of the variance for the additional storey on Building C.

EVIDENCE AND FINDINGS

[9] The Tribunal qualified planner Matt Johnston who provided expert land use opinion evidence in support of the application.

[10] Mr. Johnston described the changes from the original design of the proposed development as approved in the OMB settlement. The differences are visually depicted in Exhibit 1, page 397. He stated that the original plan had Building C as a five-storey building with setbacks and established heights that were intended to minimize visual impacts. The original plan assumed the floor of Building C was to be poured at 112 metres above sea level and that the permitted height would be calculated from that point. Mr. Johnston advised that the floor for Building C has been poured at 110 metres above sea level and at five storeys, the building would therefore be two metres lower than the maximum approved height. The Applicant is seeking additional height making Building C six storeys but with greater setbacks between the three buildings (A, B and C). It was Mr. Johnston's evidence that the increase in height and setbacks provides a net improvement in the visibility of the Niagara Escarpment. The total number of residential units would remain at 162, as approved.

[11] When considering an application for a minor variance from any by-law, the Tribunal must consider the four-part test set out in section 45(1) of the Act. This provision requires the Tribunal to consider whether the requested variance: maintains the general intent and purpose of the official plan (the "OP"); maintains the general intent and purpose of the ZBL; is desirable for the appropriate development or use of the land and is minor.

[12] In addition, the Tribunal considers if the requested variance is consistent with the Provincial Policy Statements, 2014 ("PPS") and is in conformance with the Growth Plan of the Greater Golden Horseshoe, 2017 (the "Growth Plan"); and the Niagara Escarpment Plan, 2017 ("NEP").

Provincial Policies

[13] Mr. Johnston spoke in detail about provisions of the NEP, particularly the Urban Area land use policies and the objective of minimizing the impact and preventing further encroachment of urban growth on the Escarpment Environment. He provided opinion evidence that the requested variances satisfied the Development Objectives under section 1.7.5.1 of the NEP that all development shall be of an urban design compatible with the scenic resources of the Niagara Escarpment. Section 2.12.1 of the NEP speaks to ensuring the protection of the scenic resources of the Niagara Escarpment and sets out a requirement under section 2.13.2 for a visual impact assessment. This is most relevant to the variance for the additional storey. The Tribunal heard that as part of the original assessment of the development a visual impact study had been undertaken. This study informed Mr. Johnston's opinion that the proposed variances conform to the NEP.

[14] It was Mr. Johnston's evidence that the five requested variances are consistent with the PPS and are in conformance with the Growth Plan and the NEP.

Official Plan

[15] Mr. Johnston reviewed the provision of the Urban Hamilton OP. The subject property is within the Neighbourhoods designation. While there is no height limitation in the OP, there is to be consideration of compatibility with the surrounding area. Mr. Johnston referenced the Built Form provisions (section 3.3.3) and Views and Vistas provisions (section 3.3.5) in the context of protecting public views and vistas.

[16] It was Mr. Johnston's opinion that the requested height increase represents an appropriate form of residential intensification as it will make efficient use of an underutilized property yet will protect the views of the Niagara Escarpment.

[17] It was his opinion that all the requested variances conform to the OP.

Zoning By-law

[18] It was Mr. Johnston's evidence that the height restriction is to ensure the development does not have an adverse impact on the view corridors to the Niagara Escarpment. As described above, it was Mr. Johnston's opinion that the additional storey for Building C would have minimal impact on Niagara Escarpment views. It was his evidence that the setbacks will ensure that the viewshed is maintained. Mr. Johnston opined that the reduction in the number of visitor parking spaces will still allow the general intent and purpose of the ZBL since it will meet the needs of residents. The variances resulting in a reduction in setback from the parking area and associated landscaping will continue to provide an appropriate vegetative buffer. Further, the setback associated with the Building B canopy continues to meet the general intent and purpose of the ZBL. It was Mr. Johnston's summary opinion that the five variances meet the general intent and purpose of the ZBL.

Minor and Desirable

[19] Mr. Johnston opined that the requested variances are minor in terms of their impact and are compatible with the development on the subject property and surrounding area. He stated that reduction in the number of parking spaces is numerically minor and the decreased setback for parking and the canopy are generally consistent with the approved built form. Mr. Johnston reiterated that there is a net improvement in visibility of the Niagara Escarpment arising from the proposed changes to the development.

CONCLUSION

[20] Based on the uncontroverted evidence of Mr. Johnston and recognizing the settlement that has been reached with the NEC, the Tribunal finds that the requested variances satisfy the four-part test set out in s. 45(1) of the Act, are consistent with the PPS, and are in conformance with the Growth Plan and the NEP. As such the requested variances, as they will permit the proposed development, represent good

planning and the Tribunal allows the appeal in part and grants the requested variances.

ORDER

[21] The Tribunal orders that the appeal is allowed in part and the requested variances are authorized subject to the conditions set out in Attachment 1.

“L.M. Bruce”

L.M. BRUCE
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.

Local Planning Appeal Tribunal

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

ATTACHMENT “1”

Conditions

1. That an application for Site Plan Amendment is made to facilitate the sixth floor, to the satisfaction of the Manager of Development Planning, Heritage and Design;
2. That the Owner enter into a Commercial Boulevard Parking Agreement for the parking spaces along Charlton Avenue East, to the satisfaction of the Manager of Hamilton Municipal Park, and the Manager of Development Planning, Heritage and Design;
3. That the applicant shall confirm the total number of dwelling units proposed with a gross floor area greater than 50.0 sq. m or ensure that required parking is provided; and
4. That the applicant shall ensure that a visual barrier is maintained between the easterly residential district and the parking area.