

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



ISSUE DATE: December 19, 2019

CASE NO(S): PL190349

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:	Catharine Duke & Co.
Subject:	Minor Variance
Variance from By-law No.:	3692-92
Property Address/Description:	74 Felker Avenue
Municipality:	City of Hamilton
Municipal File No.:	A-189/19
LPAT Case No.:	PL190349
LPAT File No.:	PL190349
LPAT Case Name:	Catharine Duke & Co. v Hamilton (City)

Heard: November 20, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Catharine Duke & Co.
(Applicant/Appellant)

Counsel

Brian Duxbury

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID BROWN AND
JATINDER BHULLAR ON NOVEMBER 20, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This was a hearing in the matter of an appeal to the Local Planning Appeal Tribunal by Catharine Duke & Co. under s. 45(12) of the *Planning Act* (the "Act"), with respect to a decision by the City of Hamilton (the "City") Committee of Adjustment which refused an Application for Minor Variance for the property located at 74 Felker Avenue (the "Subject Property").

[2] The Tribunal filed and entered a Book of Documents prepared on behalf of the Applicant/Appellant as Exhibit 1.

[3] Joseph Sanseverino, a Development Coordinator at the City, was called as a witness under summons by the Applicant/Appellant. Mr. Sanseverino was qualified by the Tribunal to provide opinion evidence in the area of land use planning

[4] The City did not appear at the hearing.

SUBJECT PROPERTY

[5] The Subject Property is known municipally as 74 Felker Avenue and is located at the north easterly corner of Centennial Parkway and Felker Avenue.

[6] The Subject Property is currently vacant and is abutted to the north and easterly sides by single detached residential dwellings. Felker Avenue is an access road to the residential community to the east from Centennial Parkway, a major collector road in the area. The lands opposite the Subject Property on Centennial Parkway are currently being developed with a senior's residence and just north of the Subject Property is a medical office building fronting on Centennial Parkway.

PROPOSAL

[7] The request before the Tribunal is to permit the development of the Subject

Property with a triplex residential dwelling providing six on-site parking spaces configured in three sets of tandem parking spaces accessed from Felker Avenue.

[8] The Applicant/Appellant is seeking four variances from the City's Zoning By-law No. 3692-92 (the "ZBL") as follows:

1. Three parking spaces shall be provided in tandem with the other three parking spaces, whereas the by-law prohibits parking spaces required for triplex dwellings to be provided in tandem.
2. No on-site manoeuvring space (direct access) shall be provided for three parking spaces and a minimum manoeuvring space (direct access) of 5.8 metres ("m") shall be provided for the remaining three parking spaces instead of the minimum 6.0 m manoeuvring space (direct access) required for each parking space.
3. The parking area containing six parking spaces shall be located 0.0 m from a lot line whereas the by-law requires parking areas containing four or more parking spaces to be located at least 3.0 m from a lot line.
4. The parking area containing six parking spaces shall be located 4.0 m from a dwelling unit located on another lot whereas the by-law requires parking areas containing four or more parking spaces to be located at least 5.0 m from a dwelling located on another lot.

PLANNING CONTEXT

[9] Mr. Sanseverino testified that the Provincial Policy Statement 2014 (the "PPS") encourages redevelopment and intensification and this proposal is consistent with the policies. Further, Mr. Sanseverino testified that the Growth Plan for the Greater Golden Horseshoe 2019 (the "Growth Plan 2019") directs intensification where appropriate and in this instance the proposal represents appropriate intensification.

[10] Mr. Sanseverino reviewed excerpts of the City of Hamilton Official Plan (the "OP"), specifically Schedule E, Urban Structure, and identified Centennial Parkway as a Secondary Corridor. Section 2.4.3 of the OP sets out that Urban Corridors shall be the location for a range of higher density land uses along the corridor door, including mixed uses where feasible, supported by higher order transit on the Primary Corridors. Mr. Sanseverino opined that the proposed triplex dwelling is an appropriate land use along Centennial Parkway in this location.

[11] Mr. Sanseverino testified that Section 7.2.2.3 of the Old Town Secondary Plan policies of the OP sets out the policies for the Medium Density Residential 3 designation. These policies permit a wide range of multiple dwelling structures and establish a maximum building height not to exceed three stories along Centennial Parkway. Mr. Sanseverino concluded that the proposed development complies with these policies.

[12] Tab 13 of Exhibit 1 contains an excerpt of the ZBL. Section 6.8.2 of the ZBL includes a list of permitted uses for each lot within a Multiple Residential "RM1" Zone. Mr. Sanseverino testified that the Subject Property is zoned RM1 and that Section 6.8.2(d) permits a triplex dwelling.

[13] Exhibit 5 was filed with the Tribunal as an excerpt of the former Stoney Creek Zoning By-law No. 3692-92. Section 6.1.8 (c) states that:

...where the required minimum number of parking spaces is four or more, no parking space shall be provided closer than 3 m to any lot line or closer than 5 m to any dwelling unit located on a lot other than the said lot except that the provisions of this clause shall not apply to any parking space located within a private garage or underground garage.

Mr. Sanseverino testified that the By-law provision requires compliance with both performance standards with the more restrictive provision taking precedent. In this instance, the setback of the parking area to the easterly property line of less than 3 m is superseded by the requirement that the parking spaces can be no closer than 5 m to any dwelling unit located on the adjacent lot. It was noted that the easterly setback to

the parking area from the property line is less than 3 m.

[14] Mr. Sanseverino opined that the intent of the setback in the parking area to an adjacent dwelling is to minimize impacts from dust, noise, light pollution, and the possible impact on the occupants of the adjacent dwelling. He testified there is a board fence along the westerly property line and that the westerly wall of the adjacent dwelling contains no openings as it is the attached garage to the residential dwelling. As such, the setback will not create an impact on the occupants of the adjacent dwelling.

[15] The proposed parking configuration consists of three sets of tandem parking spaces. Each set of tandem of spaces will have direct access to Felker Avenue across the City boulevard. The City is requesting a condition of approval requiring that each set of tandem parking spaces is assigned to a specific unit within the proposed triplex dwelling.

[16] Mr. Sanseverino testified that the proposed parking area will function in a similar manner to other multiple car driveways in the area. The requested condition assigning each pair of tandem parking spaces to a specific unit will ensure the proper functioning of the required parking. It was Mr. Sanseverino's opinion that there is no adverse impact resulting from the proposed parking configuration. The 4 m setback proposed from the attached garage of the adjacent dwelling together with the existing board fence will ensure minimal impact from the reduced setback.

[17] The City Staff Report included a request for a condition to increase the size of the proposed parking area by 0.2 m such that the interior tandem parking spaces would then have a manoeuvring space in compliance with the ZBL and remove the need for the requested minor variance in that respect.

[18] In respect to the tests of a minor variance as set out in the Act, Mr. Sanseverino testified that the proposed use is permitted by the OP and the ZBL and that the provision of the required parking wholly onsite maintains the intent and purpose of the OP and the ZBL. The configuration and function of the parking is desirable and

appropriate, and the request will not create any adverse impact and is therefore minor in nature.

CONCLUSIONS

[19] The Tribunal has reviewed the proposal and relief being sought in the context of the surrounding neighborhood.

[20] The Tribunal is persuaded by the uncontested land use planning opinion evidence of Mr. Sanseverino.

[21] The Proposal is consistent with the PPS and conforms to the policies of the Growth Plan 2019 which encourages renewal and intensification.

[22] The Tribunal finds that the general intent and purpose of the OP is maintained as the development of a triplex dwelling meets the density objectives and the required parking is provided wholly on-site.

[23] The general intent and purpose of the Zoning By-law is maintained as the required parking is provided wholly on-site and access across the city boulevard will facilitate safe ingress and egress to the required parking spaces.

[24] The request is desirable for the appropriate development and use of the Subject Lands. The development of a vacant lot with a permitted use providing sufficient parking is desirable and appropriate.

[25] The request is minor in nature as the relief granted creates no discernible adverse impact.

[26] The Tribunal is not satisfied that the increase in the size of the parking area to eliminate the variance for the manoeuvring space for the three interior tandem parking spaces is appropriate. The Tribunal is of the opinion that the loss of greenspace to

accommodate the additional maneuvering space which is occupied by the second tandem parking space results in no benefit to the parking and a detriment to the overall development. The Tribunal will therefore not impose the second condition requested by the City.

[27] The Tribunal orders that the appeal is allowed subject to condition 1 as set out in the Staff Report dated June 13, 2019 (Exhibit 1, Tab 7, Page 4) which reads,

1. The parking spaces shown as 1 and 4 on the site plan shall be dedicated exclusively to Unit 1. The parking spaces shown as 2 and 5 shall be dedicated exclusively to Unit 2. The parking spaces shown as 3 and 6 shall be dedicated Specifically to Unit 3. The proponent shall illustrate this condition by providing signage or markings on the site plan to the satisfaction of the City's Manager of Development Planning and Heritage Design.

[28] This is the Order of the Tribunal.

"David Brown"

DAVID BROWN
MEMBER

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.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.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248