

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



ISSUE DATE: February 19, 2020

CASE NO(S): PL190444

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:	Nghe Luu
Applicant:	Terry Nguyen
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	208 Locke Street North
Municipality:	City of Hamilton
Municipal File No.:	A-174/19
LPAT Case No.:	PL190444
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LPAT Case Name:	Luu v. Hamilton (City)

Heard: February 6, 2020 in Hamilton, Ontario

APPEARANCES:

Parties

Representative

Terry Nguyen

Daniel Ott

Nghe Luu

Self-represented

DECISION DELIVERED BY DAVID BROWN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal is an appeal under s. 45(12) of the *Planning Act* (the "Act") from a decision of the City of Hamilton (the "City") Committee of Adjustment ("COA"). Terry Nguyen (the "Applicant") filed an Application for Minor Variance that was considered and approved by the COA on August 15, 2019. Nghe Luu (the "Appellant") appealed the COA decision.

[2] The Applicant owns the property located at 208 Locke Street North (the "subject property") and is proposing to convert the existing single detached residential dwelling into a two-unit dwelling.

[3] The subject property is located at the south-easterly corner of Locke Street North and Barton Street West. The subject property has a frontage of approximately 7.9 metres ("m") along Locke Street North and flankage along Barton Street West of approximately 20.1 m with a total lot area of approximately 159 square metres ("m²"). The subject property is currently occupied by a two-and-a-half storey residential dwelling with two parking spaces accessed from Barton Street West located partially within the municipal boulevard.

[4] The subject property is located in an older area of the City and is characterized by a mix of single detached, semi-detached and row dwellings with a variety of one storey, one-and-a-half storey, two storey, and two-and-a-half storey dwellings.

[5] In considering an appeal of an Application for Minor Variance, the Tribunal must be satisfied that proposal meets the four tests of a minor variance as set out in s. 45(1) of the Act:

1. Does the request maintain the general intent and purpose of the Official Plan?

2. Does the request maintain the general intent and purpose of the Zoning By-law?
3. Is the request desirable for the appropriate development or use of the subject lands? and;
4. Is the request minor in nature?

[6] Further, the Tribunal is to have regard for the matters as set out in s. 2 of the Act, determine if the proposal is consistent with the Provincial Policy Statement 2014 ("PPS"), and conforms to the Places to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (the "Growth Plan").

[7] Daniel Ott appeared on behalf of the Applicant and presented the application and described the variances being sought. Mr. Ott explained that he is a designer and was engaged by the Applicant to prepare the plans for the conversion of the dwelling and process the required approvals from the City.

[8] Nghe Luu and his family reside at 325 Barton Street West, immediately abutting the subject lands to the east. Mr. Luu opposed the application citing that the proposal is an over intensification of use for the subject property and will create additional parking congestion in the area.

[9] The Tribunal, in considering the application, reviewed the Tribunal file, which includes a City Staff Report and a recommendation from the City Planning Department, excerpts of the City Official Plan ("OP"), and excerpts of the City Zoning By-law No. 6593 ("ZB").

[10] Having considered the submissions from the Appellant and the Applicant and having reviewed the Tribunal's file, the Tribunal is satisfied the four tests of a minor variance have been met and grants the Application for Minor Variance.

APPLICATION

[11] The Applicant filed an Application for Minor Variance to permit an existing single family detached dwelling to be converted to contain two dwelling units and to construct a third storey dormer on the south side of the roof notwithstanding that:

1. A minimum lot area of 159 m² shall be provided instead of the minimum required lot area of 270 m² for a converted dwelling,
2. The external appearance of the converted dwelling shall be permitted to be altered by construction of the third storey dormer on the south side of the roof instead of the requirement that the external appearance and character of the converted dwelling shall be preserved,
3. A minimum side yard width of 0.0 m shall be provided for the proposed dormer addition instead of the minimum required side yard width of 0.9 m,
4. No parking spaces shall be provided instead of the minimum required two parking spaces.

APPLICANT'S SUBMISSIONS

[12] Mr. Ott presented the application to the Tribunal explaining that it is proposed to convert the existing single family dwelling to create two units within the existing structure. A set of plans were filed as Exhibit 1. Mr. Ott explained that the only change proposed to the exterior of the dwelling is the construction of a third floor dormer, which will be located on the southerly side of the roof and be centrally located within the roof structure. He noted that the roof line of the dormer is below the height of the ridge line of the existing roof structure. The proposed dormer structure, as a result of its height and position on the roof, will not be visible from the street and will not be as prominent as the existing dormer on the northerly side of the roof.

[13] In respect to the parking, Mr. Ott explained that the subject property has two parking spaces accessed off of Barton Street West; however, as a portion of the parking spaces are located within the municipal boulevard, the Building Department does not recognize them as legal parking spaces. A copy of a letter from the City, confirming the approval of use of the City boulevard for parking, was filed as Exhibit 3. Mr. Ott submitted that this approval enables the subject property to provide two legal parking spaces and thereby, comply with the ZB requirement to provide two parking spaces. Mr. Ott noted that as the subject property is a corner lot, the generous boulevard creates the opportunity to provide additional landscaping as shown in Exhibit 2, which is a photograph of the Barton Street West side of the subject property.

[14] Mr. Ott submitted a copy of City By-law No.19-307 as Exhibit 5. He explained that the City is undertaking a pilot project respecting the residential conversion requirements for accessory dwelling units in certain areas of the City, one of which includes the subject property. The pilot project includes reducing the lot area requirement for a residential conversion and a recognition of existing parking configurations and not requiring additional parking.

[15] Mr. Ott spoke to the four tests of a minor variance. He submitted that the proposal is minor in nature as there is no change to the character of the dwelling and the dormer addition creates no impact. The subject property and existing structure is of sufficient size to accommodate the two dwelling units, the required parking and a rear yard amenity area. The proposal will introduce additional housing, which is desirable and appropriate for the City and this meets the general intent and purpose of the OP and the ZB.

APPELLANT'S SUBMISSIONS

[16] Mr. Luu submitted a letter he prepared on behalf of his father who owns the abutting property. The letter included a petition signed by ten individuals representing eight surrounding properties. The letter was marked as Exhibit 7.

[17] Mr. Luu reviewed the letter noting that the lot area relief being requested is significant and the intensity of the proposed use is not appropriate for the subject lands. The letter raised issues with respect to fire safety as it relates to the proposed third floor dormer not providing a setback to the property line.

[18] In respect to parking, Mr. Luu raised a concern that the two parking spaces will not be sufficient to accommodate the proposed rental property. The area currently experiences parking congestion and the introduction of a new residential unit will increase the demand for parking in the area. Mr. Luu noted that many properties in the surrounding area do not have on-site parking and rely on the on-street parking.

[19] Mr. Luu advised the Tribunal that he has reviewed the City ZB and believes that the request is in error in that the proposal to create a second dwelling unit requires higher lot area and lot width provisions than what are being requested with the application.

[20] Mr. Luu concluded that the proposal represents an over intensification of the substandard lot and will create an adverse impact on the available parking in the area. Mr. Luu is of the opinion that the request is not minor in nature and should be refused.

PLANNING POLICY FRAMEWORK

[21] In reviewing the proposal, the Tribunal finds that the Application for Minor Variance represents; the adequate provision of a range of housing, the appropriate location for growth and development, supports public transit, promotes a built form that is well-designed and encourages a sense of place by maintaining the character of the dwelling and the community. The proposal has regard for matters of provincial interest.

[22] The proposed development is consistent with the PPS as it results in an efficient use of land and the existing infrastructure. The proposed development will also result in

cost effective development accommodating an appropriate range and mix of residential dwellings, including second units.

[23] The proposed development conforms with the Growth Plan as it prioritizes intensification and makes an efficient use of land and infrastructure while supporting transit viability. Further, the proposal supports complete communities and provides housing options, including second units, to the neighbourhood. The compact built form contributes positively to the public realm.

[24] The subject property is designated Neighbourhoods on Schedule E-1 - Urban Land Use Designations of the OP. Section E.3.2.3 permits residential dwellings, including second dwelling units. The subject property is located within the boundaries of the Strathcona Secondary Plan of the OP, which designates the subject property Low Density Residential 3. This designation provides for infill development that shall be sympathetic and complementary to the existing character of the neighbourhood including built form, building mass, and building height. Further, the designation permits a maximum dwelling height of 2.5 storeys. The proposal maintains the character of the existing dwelling with a minor addition and the dormer preserves the two-and-a-half storey character of the dwelling.

[25] The subject property is zoned "D" Districts in the ZB, which permits a residential conversion to create a two-unit dwelling in accordance with provisions of Section 19.

DECISION

[26] The Tribunal finds that the requested variances maintain the general intent and purpose of the OP. The proposed use is permitted and the proposal will preserve the character of the area with a development that is complementary to the built form of the neighbourhood.

[27] The Tribunal finds that the request maintains the general intent and purpose of the ZB. The proposal provides two parking spaces by way of the boulevard parking approval. The proposed dormer maintains the character and appearance of the existing dwelling. The side yard relief and the lot area variance recognize the existing conditions.

[28] The Tribunal is of the opinion that the request is desirable for the appropriate development and use of the subject lands. The conversion of the existing single-family dwelling is contemplated in the ZB. The proposal will preserve the existing dwelling and the introduction of a third floor dormer, which maintains the character of the dwelling and the proposal will provide additional housing in the area.

[29] The Tribunal is satisfied that the requested variances are minor in nature. The proposal will introduce a new residential unit into this established area. The character of the existing dwelling is preserved and the existing parking configuration is maintained. The request will not create any adverse impact on the adjoining properties and will complement the area.

[30] The Tribunal dismisses the appeal and grants the minor variances as requested.

[31] This is the Order of the Tribunal.

“David Brown”

DAVID BROWN
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

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